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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 19 नवम्बर, 2025 / 28 कार्तिक, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 27th August, 2025

No. : LEP-E/1/2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of

awards of the following cases announced by the **Presiding Judge, Labour Court**-cum-**Industrial Tribunal, Shimla, H.P.** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette":—**

Sl. No	Case No.	Petitioner	Respondent	Date of Award/ Orders
1.	Ref. 122/2019	Kamla Dials Workers Union	M/s Kamla Dials & Devices Ltd.	02-07-2025
2.	App. 06/2021	Kamla Dials Workers Union	M/s Kamla Dials & Devices Ltd.	02-07-2025
3.	App. 60/ 2019	Rakesh Kumar	Manager H.P. Speed ways	07-07-2025
4.	Ref. 122/2020	Sh. Sanjeev Dhunna	M.D. Alc hemist Ltd.	14-07-2025
5.	Ref. 09/2020	Sh. Naresh Rodhia	Registrar, Jaypee University of Information & Anr.	16-07-2025
6.	App.126/2022	Sh. Jai Ram	The D.F.O. Rampur	22-07-2025
7.	App.150/2025	Wipro Karamchari Sangh	M/s Wipro Enterprises (P) Ltd.	22-07-2025
8.	Ref. 68/2023	Wipro Karamchari Sangh	M/s Wipro Enterprises (P) Ltd.	22-07-2025
9.	Ref.180/2021	Pradhan/ Secy. Wipro Karamchari Sangh	M/s Wipro Enterprises (P) Ltd.	22-07-2025
10.	Ref.162/2017	Sh. Prem Singh & Ors.	M/s Sun Pharma Industries Ltd.	22-07-2025
11.	Ref. 59/2023	Tazin Dolkhar	XEN, Jal Shakti, Kaza	28-07-2025
12.	Ref. 60/2023	Champa Dolma	XEN, Jal Shakti, Kaza	28-07-2025
13.	App.180/2024	Sh. Harish Sharma	DAV College Managing Committee & Anr.	31-07-2025
14.	App.181/2024	Sh. Guru Ram	DAV College Managing Committee & Anr.	31-07-2025
15.	App.182/2024	Ms. Raj Rani	DAV College Managing Committee & Anr.	31-07-2025
16.	App.183/2024	Sh. Deepak Kumar	DAV College Managing Committee & Anr.	31-07-2025
17.	App.184/2025	Sh. Deep Chand	DAV College Managing Committee & Anr.	31-07-2025
18.	App.185/2025	Ms. Neera	DAV College Managing Committee & Anr.	31-07-2025
19.	App.186/2024	Ms. Sunita Devi	DAV College Managing Committee & Anr.	31-07-2025
20.	App.187/2024	Balvinder Kumar	DAV College Managing Committee & Anr.	31-07-2025
21.	App.188/2024	Gulab Singh	DAV College Managing Committee & Anr.	31-07-2025
22.	App.189/2024	Ms. Tara Devi	DAV College Managing Committee & Anr.	31-07-2025

23.	App.190/2024	Sh. Mohan Singh	DAV College Managing Committee & Anr.	31-07-2025
24.	App.191/2024	Sh. Naresh Kumar	DAV College Managing Committee & Anr.	31-07-2025
25.	App.192/2024	Kamal Kishore Chuhan	DAV College Managing Committee & Anr.	31-07-2025
26.	App.193/2024	Sh. Anil Kumar	DAV College Managing Committee & Anr.	31-07-2025
27.	App.194/2024	Pawan Kumar Khatri	DAV College Managing Committee & Anr.	31-07-2025
28.	App.195/2024	Ms. Uma Devi	DAV College Managing Committee & Anr.	31-07-2025
29.	App.196/2024	Ms. Hemlata	DAV College Managing Committee & Anr.	31-07-2025
30.	App.197/2024	Pumesh Mehta	DAV College Managing Committee & Anr.	31-07-2025
31.	App.198/2024	Sh. Jai Kumar	DAV College Managing Committee & Anr.	31-07-2025
32.	App. 199/2024	Sh. Pradeep Kumar	DAV College Managing Committee & Anr.	31-07-2025
33.	App.200/2024	Sh. Hardev Kumar	DAV College Managing Committee & Anr.	31-07-2025
34.	App. 201/2024	Sh. Rakesh Kumar	DAV College Managing Committee & Anr.	31-07-2025
35.	App. 202/2024	Sh. Mallah Singh	DAV College Managing Committee & Anr.	31-07-2025
36.	App. 203/2024	Sh. Vijay Kumar	DAV College Managing Committee & Anr.	31-07-2025
37.	App. 204/2024	Sh. Pawan Kumar	DAV College Managing Committee & Anr.	31-07-2025
38.	App. 205/2024	Ms. Kiran Jaswal	DAV College Managing Committee & Anr.	31-07-2025
39.	App. 206/2024	Ms. Beena Devi	DAV College Managing Committee & Anr.	31-07-2025
40.	App. 207/2024	Sh. Bhim Singh	DAV College Managing Committee & Anr.	31-07-2025
41.	App. 208/2024	Sh. Narender Kumar	DAV College Managing Committee & Anr.	31-07-2025

By order,

Sd/-
(PRIYANKA BASU INGTY, IAS).
Secretary (Lab. Emp. & O.P.).

Ref. No. 122/2019

Kamla Dials Workers Union Versus M/s Kamla Dials & Devices Ltd.

02.07.2025

Present : Sh. Vijay Kumar, President of worker union present in person with Sh. R.K. Khidtta, Ld. Csl. for the petitioner.

Sh. Raj Singh, Authorized Representative of respondent present in person with Sh. Prateek Kumar, Ld. vice Csl. for Sh. Rahul Mahajan, Ld.Csl. for the respondent.

The present referene under Section 10(1) of the Industrial Disputes Act, 1947 has been received from the appropriate government *vide* notification no. 11-2/93(Lab)ID/2019/ Nalagarh/ KDDL, dated 09.08.2019 sent by the Joint Labour Commissioner for adjudication, which was registered before this Court as reference No. 122/2019, stood amicably resolved between the parties. A joint application has been moved by the parties, stating therein that the matter has been settled between the parties as per settlements annexed with the application and the matter be disposed off in terms of settlement dated 31.01.2025. The application is duly supported with an affidavit(s) of Sh. Raj Singh, authorized representative as well as Sh. Vijay Kumar, and Sh. Vijay Nand.

The statement of Sh. Vijay Kumar, President of worker union has been recorded separately on oath, he has stated that the matter has been amicably settled and he placed on record the settlement deeds Ex. PA (11 leaves) as well as Ex. PB (14 leaves). He has admitted his signature on the settlement and he has stated that the matter be disposed off in terms of settlement Ex. PA & Ex. PB and nothing survive in the present reference. Similar statement of Sh. Raj Singh, authorized representative has also been recorded separately and he has also admitted his signature on settlement Ex. PA and Ex. PB and he has also stated that the matter be disposed off interms of the settlement of Ex. PA and Ex. PB and nothing survive in the present reference.

Since, the matter stood amicable settled between the parties by way of amicable settlements Ex. PA & Ex. PB, therefore nothing survive in this reference petition.

The present reference is answered accordingly in terms of settlements Ex. PA and Ex. PB. The statement(s) of both the parties as well as settlements Ex. PA and Ex. PB, shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
02.07.2025

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla.

App. No. 06/2021

Workers Union Versus M.D. M/s Kamla Dails & Devices Ltd.

02.07.2025

Present : Sh. Vijay Kumar, President of worker union present in person with Sh. R.K. Khidtta, Ld. Csl. for the petitioner.

Sh. Raj Singh, Authorized Representative of respondent present in person with Sh. Prateek Kumar, Ld. vice Csl. for Sh. Rahul Mahajan, Ld. Csl. for the respondent.

A joint application has been moved by the parties, stating therein that the matter has been settled between the parties as per settlements annexed with the application and the matter be disposed off in terms of settlement dated 31.01.2025. The application is duly supported with an affidavit(s) of Sh. Raj Singh, authorized representative as well as Sh. Vijay Kumar, and Sh. Vijay Nand.

The statement of Sh. Vijay Kumar, President of worker union has been recorded separately on oath, he has stated that the matter has been amicably settled and he placed on record the settlement deeds Ex. PA (11 leaves) as well as Ex. PB (14 leaves). He has admitted his signature on the settlement and he has stated that the matter be disposed off in terms of settlement Ex. PA & Ex. PB and nothing survive in the present application. Similar statement of Sh. Raj Singh, authorized representative has also been recorded separately and he has also admitted his signature on settlement Ex. PA and Ex. PB and he has also stated that the matter be disposed off in terms of the settlement of Ex. PA and Ex. PB and nothing survive in the present application.

Since, the matter stood amicable settled between the parties by way of amicable settlements Ex. PA & Ex. PB, therefore nothing survive in this application.

The present application is answered accordingly in terms of settlements Ex. PA and Ex. PB. The statement(s) of both the parties as well as settlements Ex. PA and Ex. PB, shall form part and parcel of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
02.07.2025

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application No. : 60 of 2019

Instituted on : 01.07.2019

Decided on : 07.07.2025

Rakesh Kumar s/o Sh. Devi Singh Thakur, r/o Village Jhajiya (Banuti), P.O. Rouri, Tehsil & District Shimla, H.P. . . *Petitioner.*

Versus

1. The Manager H.P. Speed ways (Petrol Pump) Hira Nagar, Totu Shimla, H.P. 171011.

2. Sh. Ajay Bansal Dealer of the H.P. Speed ways (Petrol Pump) Hira Nagar, Totu Shimla, H.P. 171011.

3. The Regional Manager, Hindustan Petroleum Ltd. Corporation Hameer House 3rd Floor Lower Chakker, Shimla-05.

4. The Executive Direction-Retain Hindustan Petroleum Corporation Ltd. Hindustan Bhawan Retail SBU, NO. 8 S.V. Marg Ballard Estate, Mumbai 400001 . . *Respondents.*

Claim petition on behalf of the petitioner under Industrial Disputes Act 1947

For the petitioner : Sh. K.S. Thakur, Adv.

For the respondent no. 1 : Ex-Parte

For the respondent no. 2 : Ex-Parte

For the respondent's no. 3 & 4 : Ms. Veena Sood, Adv.

AWARD

The present claim petition has been filed by the petitioner directly before this Court under the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. The case as set up by the petitioner in the statement of claim is that he was appointed as salesman in the petrol pump namely HP SPEED WAYS PETROL PUMP, HIRQA NAGAR, TOTU, SHIMLA (HP). The pump had been allotted to dealer i.e. respondent no. 2 Sh. Ajay Bansal. Petitioner joined his services *w.e.f.* 15.08.2015 on a monthly wages of Rs. 5,500/-. From september, 2017 the monthly wages were enhanced and he was paid Rs. 12,000/- per month. Further the salary of the petitioner was enhanced to Rs. 12,791/- per month and EPF account of the petitioner was also maintained. The petitioner had been rendering his services to the entire satisfaction of his superiors and his colleagues, which was also appreciated by his superiors, by issuing appreciation certificates for rendering excellent services to the consumers on 21.09.2015 and 28.01.2016. In a month of Feb, 2018 petitioner requested the respondent no. 2 to disclose as to how much amount had been deducted towards his EPF and further intended to know as to when his wages would be increased by respondent no. 2, on which respondent no. 2 turned furious and refused to disclose anything. Respondent no. 2 without any rhyme or reasons started to malpractice, misbehave and used unfair trade practice with the petitioner by not marking his presence in the attendance register *w.e.f.* Feb, 2018 to 31.08.2018. Whereas the petitioner had been rendering his services continuously in the petrol pump at Hira Nagar, Totu, Shimla. When petitioner requested the respondent no. 2 to release his wages for the month of Feb, 2018 till August 2018 but respondent no. 2 refused to release his outstanding amount and his services were orally terminated without issuing any prior notice or without paying any retrenchment compensation in utter violation of Section 25-F of Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). Thereafter, petitioner raised

demand notice on 18.09.2018, but till today labour inspector has not taken any initiative in the matter, as such the petitioner has directly approached this Court. Petitioner is handicapped and he was mentally harassed by the respondent no. 2. It is claimed by the petitioner that he is not gainfully employed since his illegal termination. It has been prayed through this application that respondents be directed to re-engage the petitioner as a fuel salesman in HP Speed ways (Petrol Pump) Hira Nagar, Totu, Shimla, HP and the respondents be also directed to release his outstanding monthly wages w.e.f. Feb, 2018 to August, 2018 @ Rs. 12,791/- per month with interest @18% per annum with all consequential benefits and seniority. The application is duly supported with an affidavit of Sh. Rakesh Kumar, petitioner.

3. Notices of this claim was sent to the respondents, in pursuance thereof respondents no. 1 & 2 did not chose to contest the application and were proceeded against ex-parte *vide* order dated 07.11.2019. Whereas, respondents no. 3 & 4 contested the application by filing joint reply in which they took preliminary objections of maintainability, cause of action, and that as per Section 2(a) (i) of the ID Act, the Government of India *i.e.* "Central Government" is the Appropriate Government in respect of HPCL being the Central Public Sector Undertaking. On merits, respondent's no. 3 & 4 alleged that no relationship of employer-employee exists between petitioner and the respondents no. 3 & 4. It was averred that the petitioner was appointed at HP Speedways Petrol Pump, Hira Nagar, Totu, Shimla, H.P., through dealer. Respondents no. 3 & 4 have no control on selection or requirement of the manpower by the dealer. As per the terms and conditions of dealership agreement, dealer has to employee sufficient number of manpower at his own costs for the jobs required to be carry out for the operations of said dealership. As per the clause 47 of dealership agreement dated 29.09.2010 with M/s H.P. Speedways, dealer shall at his cost maintain an adequate staff. Service conditions of the personnel appointed by the dealers are ensured by the dealers. Applicant has claimed the relief only against the HP Speedways not against respondents no. 3 & 4 and prayed for the dismissal of the claim petition. The reply is duly supported with an affidavit of Sh. Ajay Kumar Bhardwaj, Deputy General Manager.

4. Though, it is mentioned in order dated 21.05.2022 that rejoinder has already been filed however, order sheet dated 13.01.2022 shows that the petitioner had informed that he did not intend to file any rejoinder and the case was listed for framing of issues. From 13.01.2022 to 21.05.2022 no rejoinder has been filed, nor the same is on the case file.

5. On the pleadings, this Court formulated the following issues on 21.05.2022.

1. Whether the termination of services of petitioner by the respondent without complying the provisions of Industrial Disputes Act, is illegal and unjustified as alleged? If yes, what relief the petitioner is entitled to? . .*OPP*.

2. Whether the claim petition is maintainable in the present form, as alleged? . . *OPR*.

3. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Learned Counsel for the parties and have also perused the records of the case carefully.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : No

Relief : Claim petition is allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No 1.

9. The onus to prove issue no. 1 is on the petitioner.

10. To prove the averments as raised in the claim petition, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim petition. He also tendered in evidence certificate Ex. P-1 and Ex. P-2. He also stated that since his illegal termination he has not been gainfully employed anywhere.

11. During cross-examination, he admitted that he was engaged by respondents no. 1 & 2 and respondents no. 3 & 4 have no overall control and supervision on my duties. He deposed that wages were paid to him by the respondents no. 1 & 2 and his EPF and ESI were also deducted by the respondents no. 1 & 2.

12. This is the entire evidence led by the petitioner.

13. In rebuttal, the respondent examined Shri Jagtar Singh Labana, S/o Sh. Dalip Singh, Chief Regional Manager, Shimla, Region Office, Hindustan Petroleum Corporation Ltd., who into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply by respondents no. 3 & 4. He also tender his evidence power of attorney Ex. RW-1/B, agreement Ex. RW-1/C and notification dated 19.02.2021 mark RX-1.

14. During cross-examination, he denied that the certificate Ex. P-1 and Ex. P-2 were issued to the petitioner. He admitted that petitioner was engaged by the dealer i.e. respondent no. 2.

15. This is the entire evidence led by the respondent.

16. So far as, the case set up by the petitioner is concerned, he has claimed himself to be the employee of respondent no. 2. It is the claim of the petitioner that his EPF, ESI were also deducted by respondents no. 1 and 2. From the pleadings of the parties it is clear that no claim has

been preferred by petitioner against respondents no. 3 & 4 even, though they have been made party in this claim.

17. Now coming to the case in hand with the statement of the petitioner it stands establish that he was engaged by respondent no. 2 w.e.f. 15.08.2015 on a monthly wages of Rs. 5,500/- which were later increased of Rs. 12,791/- and his EPF was also deducted by respondent no. 2. Further it also stands establish with the statement of petitioner that the respondent no. 2 has not paid wages to the petitioner *w.e.f.* Feb, 2018 to 31.08.2018 and thereafter his services were terminated by the respondent no. 2 in violation of mandatory provisions of Law. Before terminating the services of the petitioner, it was incumbent upon the respondent no. 2 to have issue a notice under Section 25-F of the Act, but in the instant case no such notice has been issued to the petitioner. Section 25-F reads as under:

> "*No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".*

18. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice, but the respondent no. 2 has not complied with the provisions of Section 25-F of the Act and proceeded to terminate the services of the petitioner orally as such the termination of the petitioner from service *w.e.f.* 31.08.2018 is neither legal nor justified.

19. The petitioner has established on record that respondent no. 2 has not paid wages to him from February, 2018 to August, 2018 and thereafter his services were orally terminated in the month of August, 2018. Though, respondents no. 3 & 4, have taken the plea that the appropriate government in case of respondents no. 3 & 4 is the Central Government and not the State Government however, since the petitioner himself has admitted during his cross-examination that he was not working under the supervision and control of respondents no. 3 & 4 and he was employee of respondents no. 1 & 2 and no relief claim has been made against the respondents no. 3 & 4, as such these objections raised by the respondents no. 3 & 4 have not been considered.

20. Now, the last question which has been raised by the petitioner through this claim petition is that he is not only entitled for reinstatement with seniority and continuity but also for back-wages. The petitioner in his statement of claim has averred that since the date of his termination, he is not gainfully employed anywhere. Though, it is settled that the entitlement of any employee to get re-instated does not necessarily and mechanically result in payment of full or partial back-wages which is independent of re-instatement and host of factors like the manner and method of selection and appointment, nature of appointment whether ad-hoc, short term, daily wage, temporary and permanent in character and length of service, which the workman had rendered with the employer, are required to be taken into consideration before passing any order for award of back-wages. This position was reiterated in **Kanpur Electricity Supply C. Ltd. Vs. Shamim Mirza (2009) 1 SCC 20** as well as in **Ritu Marbles Vs. Prabhankant Shukla (2010) 2 SCC 70**.

21. In the case in hand the averments as made in the claim and affidavit Ex. PW-1/A against respondent no. 2 goes unrebutted. The petitioner has shown that he was not gainfully employed anywhere. Petitioner in his affidavit has stated that he is unemployed from the date of his termination and is not gainfully employed anywhere. In **Kendriya Vidyalaya Sangathan Versus S.C. Sharma (2005) SCC 363**, the Hon'ble Apex Court held that the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on the employee to prove that. The Hon'ble Apex Court in **National Gandhi Musuem Vs. Sudhir Sharma (2-21) 12 SCC 439** has considered this aspect and held as under:

> **"Whether an employee after dismissal from service was gainfully employed is something, which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden, however, in what manner the employee can discharge the said burden will depend upon peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer."**

22. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324***, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

23. In ***Cargo Motors (Gujrat) Limited Vs. Kritikant Shivajirav Jadav, Letters Patent Appeal No. 1512 of 2019 decided on 07.08.2023***, it has been held by the Hon'ble High Court of Gujrat at Ahemdabad that it is settled law that in a case of termination of employment, though award of back-wages is not automatic with the award of reinstatement, but in case the fault is found

on the part of the employer, 100% wages can be provided. The fundamental principle is that no one can take benefit of its own wrong.

24. In view of above discussions, the petitioner is not only entitled to his salary from February, 2018 to August, 2018 but also for reinstatement in service with continuity and full back wages from his illegal oral termination. Issue no. 1 is decided in favour of the petitioner.

Issue No. 2.

25. As per the version of the claim, the petitioner had raised demand notice but nothing was done on the demand notice dated 18.09.2018. Further, petitioner had directly filed this claim before the Court under the provisions of Section 2-A of the Act on 25.06.2019. Additionally, from the date of when the demand notice raised by the petitioner 45 days had already been elapsed when the present claim was filed. As such, the claim filed by the petitioner is maintainable before this Court. Issue no. 2 is decided in favour of the petitioner and against the respondent no. 2.

Relief.

26. In view of my aforesaid discussion and findings on the above issues, the claim of the petitioner succeeds and is hereby allowed. The respondent no. 2 is directed to re-instate the petitioner in service forthwith with seniority and continuity with effect from the date of his termination i.e. 31.08.2018 along-with full back-wages *w.e.f.* February, 2018. The back-wages shall be payable by the respondent no. 2 to the petitioner within a period of three months from the date of award, failing which, the same shall carry an interest @ 9% per annum. The application is answered in the aforesaid terms.

27. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 7th day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE

H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No.	:	122 of 2020
Instituted on	:	18.07.2020
Decided on	:	14.07.2025

Sanjeev Dhunna, Territory Executive, North Field Annexes, Lower Kaithu, Shimla-171003.
. . *Petitioner*.

Versus

The Managing Director, Alchemist Ltd. (Pharma), Alchemist House, Building No. 23, Nehru Place, New Delhi-110019 . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Vineet Guleria, Advocate

For the respondent : *Ex-parte*

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether termination of the services of Sh. Sanjeev Dhunna, Territory Executive, North Field Annexes, Lower Kaithu, Shimla-171 003 by the Managing Director, Alchemist Ltd. (Pharma), Alchemist House, Building No. 23, Nehru Place, New Delhi-110019 w.e.f. 20.02.2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. The case as set up by the petitioner in his statement of claim is that petitioner was initially appointed in Valiant Healthcare Limited on 22.10.2001 on total emoluments of Rs. 7,600/- per month. As per the appointment letter the probation period of the petitioner was for twelve months which was extendable up to two year, however, the services of the petitioner were confirmed within twelve months. As per the parting clause of appointment letter, the services of the petitioner could be terminated without assigning any reason after giving one months notice or payment of a month salary in lieu thereof. At the time of initial appointment, the petitioner was subjected to the terms and conditions stipulated in the contract and the petitioner had no option but to sign the contract on dotted line. In the year, 2007 all the business activities which were initially carried out in the name of the Valiant Healthcare Limited were decided by the respondent to be carried out under the banner of Alchemist Limited. As such the services of the petitioner were also transferred to Alchemist Ltd. *w.e.f.* 01.07.2007 and all terms and conditions of the petitioner remained unchanged. Vide appointment letter dated 30.11.2012, petitioner was offered appointment as Territory Executive *w.e.f.* 01.10.2001 and total wages payable to the petitioner were Rs. 30,887/- per month. Petitioner was discharging his duties with the best of his ability and to the entire satisfaction of his superiors and worked as such with the organization continuously till 20.02.2019. However, *vide* letter dated 07.03.2019 the services of the petitioner were terminated *w.e.f.* 20.02.2019 by the respondent, without assigning any reason. The impugned order is arbitrary, malafide and has been issued in violation of rules, regulations, standing orders and due process of law. The salary of the petitioner *w.e.f.* November, 2018 to February, 2019 has also not been paid to the petitioner. The respondent had not honoured the terms of the contract while terminating the services of the petitioner. It is averred that termination of the petitioner is against the mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act (hereinafter to be referred as the Act.) During the course of the employment the work and conduct of the petitioner

was always appreciated by the respondent. No warning or chargesheet was ever issued to him. The petitioner has worked with the respondent for last 18 years, as such he is also entitled for gratuity under Section 4 of the Payment of Gratuity Act, 1972. Apart from this, petitioner also claimed for his travelling allowance and daily allowance @ of Rs. 500 per month. Petitioner has also claimed for bonus for last 5 years and has alleged that the respondent has not followed the principle of "last come first go". It has been prayed through this claim that the impugned order dated 07.03.2019 be quashed and petitioner be re-engaged *w.e.f.* 20.02.2019 with full back wages and interest @ 18% and all other consequential benefits along with damages of Rs. 2,00,000/- for causing harassment to the petitioner.

3. Notice of this claim petition was sent to the respondent, however respondent did not appear in the Court, Vide order dated 05.04.2021 respondent was proceeded against ex-parte, however a fresh notice was issued to the respondent but respondent again did not appear in the Court as such he was again proceeded against ex-parte vide order dated 07.08.2023.

4. The petitioner thereafter led evidence and examined himself as PW-1, however, since the respondent was ex-parte, neither this witness has been cross-examined nor any evidence of the respondent is on record.

5. The petitioner while appearing into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition. He was also tender in evidence account statement of period *w.e.f.* 01.04.2018 to 30.09.2018 Ex. PW-1/B, account statement *w.e.f.* 01.10.2018 to 30.03.2019 Ex. PW-1/C and EPF details Ex. PW-1/D.

6. This is the entire evidence led by the petitioner.

7. In terms of the reference, it is incumbent upon this Court to first decide the question as to whether the petitioner falls within the definition of "workman" or not?

8. Now, coming to the reference in hand, it is the case of the petitioner that he was appointed as Territory Executive with the respondent. The petitioner has claimed that initially he was appointed with Valiant Healthcare Limited on 22.10.2001 on total emoluments of Rs. 7,600/- per month. Thereafter, Valiant Healthcare Limited carried out the business under the name and style of Alchemist Limited. It is the case of the petitioner that he was getting salary more than 37,000/- in the year, 2019. Petitioner, though has alleged that his services were terminated but the petitioner has not made any averments either in the claim or in the evidence that the petitioner did fall in the definition of "workman" as provided under Section 2(s) of the Act.

9. Before adverting any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of section 2(s) of the Act. The Section reads as under:

"**Workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work**

for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

10. Viewed in this context, a bare reading of the claim as well as the affidavit filed by the petitioner establish on record that he was appointed as a Territory Executive. He has mentioned in the para no. 8 that the sales of the petitioner were always on the higher side comparing to his counterparts and he remained mostly as topper in "All India Sales". A Territory Executive in sales is the person who manages and expend sales within a specific geographical area and is responsible for achieving sales target. The averments made in the claim as well as the averments made in the affidavit clearly enact that he was not discharging his duties as manual, unskilled, skilled, technical, operational and clerical work.

11. Petitioner was a Territory Executive who was drawing wages more than Rs. 30,000/- per month. In determining the nature of work, the designation of the employee or the name assigned to him should not be given due importance and the primary duty performed by the person is to be given due importance, but coming to the case in hand there is no evidence worth the name to suggest that the petitioner was doing any other duty that to manage the sales in the respondent company. There is no evidence, worth the name led by the petitioner to establish on record that he was doing any manual, unskilled, skilled, technical, operational and clerical work with the respondent. **In <u>Somnath Tulshi Ram Galande Vs. Presiding Officer, IInd Labout Court Pune and others 2008 (4) Mh.L.J 163, the Hon'ble Apex Court has held as under:</u>**

"Where a particular workman is a supervisor within or without the definition of "workman" is "ultimately a question of fact, at best one of mixed fact and law" and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organizational set up of the particular unit of industry and the like factors."

12. The Hon'ble High Court had come to record a finding in the aforesaid case that the appellant therein was undertaking supervisory and managerial work as such he was not covered under the definition of "workman".

13. Similarly, in **S.K. Maini v. Carona Sahu Co. Ltd., 1994 AIR 1824,** the Supreme Court has held as under:

> **"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straitjacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it ...the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as Section 2(s) of the Industrial Disputes Act.**
>
> **The appellant in the present case had multifarious duties and most of his duties were supervisory and managerial. He had the power and capacity to take decisions, supervise work of others and was also responsible for quality control of the products being manufactured. The character and nature of his duties while seen in the light of the documentary and oral evidence led by the parties, it can be concluded that the appellant was not a 'workman' within the definition of Section 2(s) of the Act. Looking into the admission of the workman and specific language of Exhibit 29 and the terms and conditions of his appointment, it is difficult to arrive at any conclusion other than the one arrived at by the Labour Court and the learned single Judge in the impugned order."**

14. From the statement of claim as available on record, the petitioner has failed to make any averment that he was doing any manual, unskilled, skilled, technical, operational and clerical work. The character and nature of his duties while seen in the light of the evidence as available on record it can be concluded that the petitioner does not fall under the definition of "workman" as provided under Section 2(s) of the Act as such the reference made by him in this regard and sent to this Court is not maintainable and the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not a workman as prescribed under Section 2(s) of the Act as such he is not entitled to any relief as claimed by him. The reference is answered in the aforesaid terms.

15. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 14th day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference No. : 09 of 2020

Instituted on : 22.01.2020

Decided on : 16.07.2025

Naresh Rodhia s/o Shri Raj Singh r/o House No. 18/8, Sai Chhaaya, Gate no.1, Shakti Nagar, Tehsil & District Solan, H.P. . . *Petitioner*.

Versus

1. The Registrar, Jaypee University of Information and Technology, P.O. Waknaghat, Tehsil Kandaghat, District Solan, H.P.

2. The Director JIL, IT Information Technology Ltd., 64/4, Site-IV, Sahibabad, Industrial Area, District Ghazibad, U.P. . . *Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Sh. Sunny Rawat, Adv.

For the respondent no. 1. : Ms. Veena Sood, Adv.

For the respondent no. 2. : Sh. Rahul Mahajan, Adv.

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether termination of services of Shri Naresh Rodhia s/o Shri Raj Singh r/o House No. 18/8, Sai Chhaaya, Gate no.1, Shakti Nagar, Tehsil & District Solan, H.P by the**

management of JIL, IT Information Technology Ltd., 64/4, Site-IV, Sahibabad, Industrial Area, District Ghazibad, U.P 201010o and the Registrar, Jaypee University of Information and Technology, PO Waknaghat, Tehsil Kandaghat, District Solan, 173234 H.P w.e.f. 10.04.2019 after transferring him from the Jaypee University of Information and Technology, PO Waknaghat, Tehsil Kandaghat, District Solan, H.P to JIL, IT Information Technology Ltd., 64/4, Site-IV, Sahibabad, Industrial Area, District Ghazibad, UP on 9.4.2019 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

2. The case as set up by the petitioner is that he was provisionally selected as Senior Assistant at first instance on 07.11.2019 and he reported orientation at Sahibabad for some time and on completion of his orientation an appointment letter on probation for six months was issued to him. After successful completion of probation period, the services of the petitioner were confirmed and regularized on 01.06.2010. The petitioner was deployed with Jaypee University at Waknaghat which has been established under Act no. 14 of 2002 by the Legislative Assembly of Himachal Pradesh. The petitioner was granted two increments on 25.04.2013 and thereafter he made representation to the respondents to grant him promotion as he had worked for more than ten years on the same post of Senior Assistant. *Vide* representations dated 29.01.2019, 31.01.2019 and 2.2.2019, he requested the respondents for his promotion, but instead of granting promotion to the petitioner, he was called in the office of the Director on 09.04.2019 at Waknaghat and he was asked to join at Noida (UP) and thereafter the services of the petitioner were terminated in contravention to oral transfer order dated 10.04.2019 without allowing him to join at Noida and his services were terminated on 10.04.2019 without assigning him any reasons. Petitioner was drawing salary of Rs.18,934/- at the time of his illegal termination. Petitioner was not allowed to join at transferred place or at original place of working *i.e.* Jaypee University, Waknaghat, Solan. Petitioner made a representation to the Director of the company at Sahibabad and Registrar of Jaypee University, which was also sent to the Labour-cum-Conciliation Officer Solan on 30.08.2019, but all in vain. Petitioner was neither allowed to enter the JIL, IT Information Technology, Sahibabad nor at the University, Waknaghat. Neither any show cause notice was issued to the petitioner nor any fair enquiry was conducted against him before terminating his services. The services of the petitioner were terminated without serving any chargesheet and no enquiry was conducted in accordance with the law of natural justice. The management of respondent no.1 has resorted the colourable exercise of the employer rights in a arbitrary manner and that too without compliance of the provisions of Labour Law Legislation and rules made thereunder. The services of the petitioner were terminated in violation of clause 5.01 of the appointment letter, wherein it has been incorporated that after confirmation, the services of the petitioner can be terminated by giving three month's notice by either side and salary in lieu thereof, but nothing has been paid to the petitioner at the time of his termination. Petitioner had worked for more than 240 days during the tenure of his service within twelve calendar months preceding to his termination, as such he is entitled to protection of provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The respondents have employed new persons in place of the petitioner in violation of the provisions of Section 25-G of the Act. The respondents have made the integrity of the petitioner doubtful in the eyes of one and all. The petitioner is unemployed and shall remain so in future. Petitioner reiterated that neither any notice was issued to him nor he was paid any compensation before terminating his

services. Through this claim petition, it has been prayed that the petitioner be reinstated in the employment of respondent no.1 with retrospective effect from the date of his illegal termination with full back-wages, seniority and other consequential service benefits throughout with costs.

3. Notice of this claim was sent to the respondents, in pursuance thereof respondents contested the claim by filing separate replies.

4. Respondent No.1 contested the claim mainly on the ground that the reference made by petitioner against respondent no.1 is neither competent nor maintainable as there exists no employer employee relationship between them. The petitioner was employee of respondent no.2 and in terms of agreement executed between respondent no.1 and respondent no.2, the petitioner was deputed by respondent no.2 with respondent no.1. All legal compliances under various labour laws and statutes were being done by respondent no.2. On merits, it was averred that the petitioner was employee of respondent no.2 who was deployed with respondent no.1. Petitioner himself has admitted that he was regularized by respondent no.2 on completion of probation period and was granted increments by respondent no.2. The request for promotion has also been submitted by the petitioner to respondent no.2. The salary/wages was being paid by respondent no.2 to the petitioner and all the legal compliances were also being done by respondent no. 2. It is further averred that the respondent no.2 had transferred the petitioner from Waknaghat to Noida vide letter dated 9.4.2019 and his termination by respondent no.2 is not within the knowledge of respondent no.1 as the petitioner was an employee of respondent no.2. It was claimed that since the petitioner was not employee of respondent no.1 as such the respondent no.1 has not violated principles of natural justice, fair hearing and provisions of the Act and prayed for the dismissal of the petition.

5. By filing separate reply, respondent no. 2 took up preliminary objections that neither the reference is competent nor maintainable as the petitioner has concealed material facts and has not approached the Court with clean hands. Petitioner was appointed by respondent no. 2 on agreed terms and conditions and was posted with respondent no.1 vide movement order to provide the hardware, software and IT related services as mutual private contract. After a period of time, the petitioner was found to be not performing his duties properly and his performance was not upto the satisfaction of respondent no. 2. Petitioner was called to Sahibabad *vide* e-mail dated 4.4.2019 for counselling and he was transferred to a new client of respondent no. 2 as per terms and conditions of letter of appointment, but the petitioner had refused to receive and accept the office order and left the office premises at his own willing. Petitioner had been called on 10.04.2019 at Sahibabad office and after conversation he had disagreed to accept the office order and to join the duties at Noida. Petitioner was not interested to work anywhere and also was not interested to discuss the matter at all, which was a gross misconduct and gross negligence of duties on the part of the petitioner. Enough opportunities were given to the petitioner as such respondent no. 2 was left with no choice but to terminate the services of the petitioner as per agreed terms and conditions of his appointment letter. Petitioner has approached the respondent no.1 to get no dues clearance certificate after two months and he collected his no dues certificate along-with his personal 300 GB data from office computer. It was averred that the reference is not competent and maintainable as the State of Himachal Pradesh is not the appropriate government as no cause of action arose within its territorial jurisdiction. The petitioner was employee of respondent no. 2 and it has no branch office, head office or registered office in Himachal Pradesh. The respondent no. 2 in terms of

agreement to provide IT related support service and expertise in the trade of software executed an agreement with the respondent no.1 and the petitioner was deputed by respondent no. 2 with respondent no.1 for some period of time as its representative. The dismissal of the services of the petitioner was affected by respondent no. 2 at its Head Office at Sahibabad, as such the industrial dispute could only be raised at Sahibabad. Petitioner had also raised a complaint to office of Additional Labour Commissioner and Head of UP Police Department at Lucknow, which had been heard and resolved by the office of Labour Department, Ghaziabad UP. Thus, this reference is not maintainable. The petitioner was appointed as Senior Assistant and his nature of duties were supervisory and of a technical professional as such he is not a "workman" as envisaged under Section 2-(s) of the Act. The petitioner is gainfully employed and is earning Rs. 21235/- per month. On merits, it was reiterated that the State of Himachal Pradesh is not the appropriate government to refer the dispute to this Court as no cause of action arose in the State of Himachal Pradesh as such this Tribunal has no jurisdiction to adjudicate the cause of the petitioner. It was also reiterated that the services of the petitioner were terminated by respondent no. 2 having its office at Gajiabad (UP) and it was further reiterated that there was no violation of principles of natural justice or any provisions of Act and Rules and prayed for the dismissal of the claim.

6. Separate rejoinders were filed in which the averments made in the preliminary objections were denied and took the plea that he remained under the supervision and control of respondent no.1 at Waknaghat as his entire service was with respondent no.1. Petitioner claimed that he is a workman for all purposes of Section 2-(s) of the Act and has worked long years under the management of respondent no.1 till his removal from service. He claimed that respondent no. 2 is part and parcel of respondent no.1 and denied the averments as made on merits in reply(s) and reiterated those in the statement of claim.

7. On the pleadings, this Court formulated the following issues on 22.12.2021.

1. Whether the termination of the services of the petitioner by the respondent management *w.e.f.* 10.04.2019 after transferring him from the JP University of Information and Technology, Waknaghat District Solan HP to JIL IT Information Technology Sahibabad, District Ghaziabad UP on 09.04.2019 without complying the provisions of Industrial Disputes Act, is illegal and unjustified? . .*OPP*.

2. If issue no.1 is proved in affirmative, than what sort of services benefits the petitioner is entitled to? . . *OPR*.

3. Whether the claim petition is not maintainable in the present form, as alleged? . . *OPR*.

4. Relief

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

9. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Becomes redundant
Issue No. 2	:	becomes redundant
Issue No.3	:	Yes
Relief	:	Reference is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1.

11. Issue No.1 is the most contentious issue between the parties as such the same has been taken first for determination.

12. The onus to prove issue no.1 is on the petitioner.

13. Coming to evidence led by the petitioner he stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition. He also placed on record his appointment letter Ex. PW-1/B, office order dated 01.06.2010 Ex. PW-1/C, certificate dated 22.01.2010 Ex. PW-1/D, certificate dated 19.02.2013 Ex. PW-1/E, increment letter 25.04.2013 Ex. PW-1/F, letter dated 03.12.2014 Ex. PW-1/G, letter dated 29.01.2019 Ex. PW-1/H, letter dated 25.01.2019 Ex. PW-1/J, letter dated 31.01.2019 Ex. PW-1/K, letter dated 02.02.2019 Ex. PW-1/L, letter dated 10.04.2019 Ex. PW-1/M and demand notice Ex. PW-1/N.

14. During cross-examination conducted by respondent no.1, he admitted that he was engaged by respondent no. 2 but self stated that both the respondents are one and the same company. He showed ignorance that there was an agreement executed between respondents no.1 & 2. He admitted that appointment letter was issued by respondent no. 2 and his legal dues were paid by respondent no. 2. He denied that he was under overall control and supervision of respondent no.2. He also denied that he was an employee of respondent no. 2 only.

15. During cross-examination conducted by respondent no. 2, he admitted that he was appointed by respondent no. 2 and applied for promotion, increment etc., before respondent no. 2. He admitted that he joined respondent no. 2 after admitting the terms and conditions of appointment letter. He showed ignorance that respondent no. 2 is company and respondent no.1 is an institution. He admitted that all his dues were paid by respondent no. 2. He denied that appointment letter was given to him at Sahibabad but self stated that it was given at Waknaghat. He admitted that Shri Vinay Pathak sent him e-mail dated 09.04.2019 (wrongly written as 9.4.2023 whereas the e-mail is dated 4.9.2019, which is mark RX-3). He denied that he was transferred from Waknaghat to Noida. He deposed that his services were terminated by respondent no. 2 at Sahibabad. He admitted that he had filed a complaint before Labour Commissioner, which was

compromised. Self stated that he filed the complaint as Vinay Pathak had asked to give bribe. He denied that he is gainfully employed. He admitted that he was performing software, hardware and IT related services. He admitted that he applied his mind while performing his duty. He denied that all his dues were paid. He denied that there is no violation of principles of natural justice.

16. This is the entire evidence led by the petitioner.

17. In order to rebut the case of the petitioner, the respondent no. 2 examined Shri Gajendra Kumar Singh as RW-1, who led his evidence by way of affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply filed on behalf of respondent no. 2. He also placed on record his authority letter Ex. R-1, copy of resolution mark-RX-1, power of attorney mark-RX-2, e-mail mark-RX-3, transfer order mark-RX-4, termination letter mark-RX-5, agreement mark-RX-6, extension letters mark-RX-7 to mark-RX-10, receipt mark-RX-11 and report mark-RX-12.

18. During cross-examination conducted on behalf of petitioner, he admitted that respondents no.1 & 2 belongs to same group of companies *i.e.* JP Group. Self stated that both are different companies. He denied that the employees of both the respondents are transferable to each other institutes. He admitted that the petitioner was asking for promotion but was not promoted as his performance was not upto the mark. He further admitted that the petitioner was not given any show cause notice or chargesheet. He denied that the petitioner was not issued any letter for transfer on 9.4.2019, but self stated that it was e-mailed to him on 4.4.2019. He admitted that petitioner was issued termination letter on 10.04.2019 through speed post. Self stated that it was also handed over personally to the petitioner. He denied that overall supervision and control to the services of the petitioner was of University through its Registrar. He admitted that the petitioner worked continuously from the date of appointment till his termination with respondent university. He further admitted that new recruit was engaged after the termination of the petitioner, but self stated that he was engaged much later. He denied that the appointment/termination/conciliation was carried out at Solan.

19. When cross-examined on behalf of respondent no.1, this witness has admitted that the petitioner was employee of respondent no. 2 and he was deputed with respondent no.1 on the basis of agreement. He admitted that the salary and all other benefits were paid by respondent no. 2. He admitted that the petitioner was under the control and supervision of respondent no. 2.

20. The respondent no. 1 examined Shri Major General Rakesh Bassi, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also placed on record arrangement of clauses mark-RX-12, abstract of the Act mark-RX-13, letter mark-RX-14 and copy of agreement mark-RX-15.

21. During cross-examination on behalf of respondent no. 2, he admitted that the service of the petitioner was deployed with respondent no.1 by respondent no. 2. He further admitted that salary, attendance, leave, EPF/ESI etc., was paid to him by respondent no. 2. He also admitted that overall supervision and control to the services of the petitioner was of respondent no. 2 and he was transferred by respondent no. 2.

22. When cross-examined on behalf of petitioner, this witness has admitted that JP University and JIL Institute are owned by JP Universities, but self stated that both are separate company/institute. He denied that the petitioner was employee of JP University. He deposed that the services of the petitioner were transferred from Waknaghat to Noida as they had received the copy of transfer order in their office. He admitted that the attendance of the petitioner was marked in the Registrar office. Self stated that thereafter the attendance was sent to JUIT Institute. He denied that he was the sanctioning authority of any kind of leave due in favour of the petitioner. He denied that new hand was recruited by JP University in place of petitioner.

23. This is the entire evidence led by the respondents no.1 & 2.

24. So far as the present claim is concerned, the petitioner has sought relief against respondent no.1 university by alleging that his services were wrongly terminated by respondents and he is liable to be re-instated with respondent no. 1 *w.e.f.* 10.04.2019 with full back-wages, seniority and other consequential benefits.

25. Now, the question which arises for consideration at this point is as to whether the petitioner was the employee of respondent no.1 or respondent no. 2. The petitioner in his evidence has claimed that from the date of his appointment, he had worked under the direct control and supervision of respondent no.1 as such he is required to be reinstated with respondent no.1 at Waknaghat Solan, but apart from bald statement of the petitioner in his evidence, there is nothing on record to even remotely suggest that the petitioner was engaged by respondent no.1 and the respondent no.1 was the principal employer of the petitioner. The pleadings are also contrary to the stand which the petitioner has taken in the evidence. The petitioner himself has admitted that he was appointed by respondent no. 2 and his services were terminated by respondent no. 2. It is also admitted by petitioner during his cross-examination that he had applied for promotion, increments etc., before respondent no.2 and he had joined with respondent no. 2 after accepting the terms and conditions of appointment letter. Though, he has deposed that respondents No.1 & 2 are one and same company/institute, but apart from his bald statement in his cross-examination, there is nothing on record to remotely suggest that respondents no.1 & 2 are one and same company/institute. Otherwise also, the Hon'ble Apex Court in case reported as (2014) SCC-9 407, has observed as under :

"53. **This Court would first refer to the relevant pronouncements by various English Courts in order to analyze their approach regarding employer-employee relationship.**

54. In Ready Mix Concrete (South East) Ltd v. Minister of Pensions and National Insurance, [1968] 2 QB 497, McKenna J. laid down three conditions for the existence of a contract of service. As provided at p.515 in the Ready Mix Concrete case (supra), the conditions are as follows:

"(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master; (ii) he agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to

make that other master; (iii) the other provisions of the contract are consistent with its being a contract of service."

55. In Ready Mix Concrete case (supra), McKenna J. further elaborated upon the above-quoted conditions. As regards the first, he stated that there must be wages or remuneration; else there is no consideration and therefore no contract of any kind. As regards the second condition, he stated that control would include the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. Furthermore, to establish a master-servant relationship, such control must be existent in a sufficient degree.

19. McKenna J. further referred to Lord Thankerton's "four indicia" of a contract of service said in Short v. J. and W. Henderson Ltd. (1946) 62 TLR 427. The J. and W. Henderson case (supra) at p.429, observes as follows:

"(a) The master's power of selection of his servant; (b) the payment of wages or other remuneration; (c) the master's right to control the method of doing the work; and (d) the master's right of suspension or dismissal."

57. A recent decision by the Queen's Bench, in JGE v. The Trustees of Portsmouth Roman Catholic Diocesan Trust, [2012] EWCA Civ 938, Lord Justice Ward, while discussing the hallmarks of the employer-employee relationship, observed that an employee works under the supervision and direction of his employer, whereas an independent contractor is his own master bound by his contract but not by his employer's orders. Lord Justice Ward followed the observations made by McKenna J. in the Ready Mix Concrete case (supra) as mentioned above. The JGE case (supra), further noted that 'control' was an important factor in determining an employer-employee relationship. It was held, after referring to numerous judicial decisions, that there was no single test to determine such a relationship. Therefore what would be needed to be done is to marshal various tests, which should cumulatively point either towards an employer-employee relationship or away from one."

26. Apart from this, the **Hon'ble Supreme Court in case titled as The Joint Secretary, Central Board of Secondary Education and Anr. Vs. Raj Kumar Mishra and others, 2025 LLR 474** has held that "for a person to claim employment under any organization, a direct master-servant relationship has to be established on paper". The relevant portion of the judgment is reproduced as under:

"6. **Having considered the facts and circumstances of the case(s) and submissions of learned counsel for the parties, we find substance in the contentions of learned counsel for the appellants. The issue whether the private respondents were employees of the appellants, is the crux of the matter. Whatever material has been placed and even the best point which was argued by the learned Senior Counsel for the private respondents before this Court was that since there was supervisory and jurisdictional control over the private respondents by the appellants, *ipso facto,* they would become employees of the appellants is noted only to be rejected.**

7. This is not only a very simplistic approach, but also a totally erroneous approach in law. For a person to claim employment under any organization, a direct

master-servant relationship has to be established on paper. In the present case(s), admittedly, the only document, which the private respondents have in their favour, is showing that they were posted at various places doing different nature of work.

8. This clearly in the considered opinion of the Court would not establish master-servant relationship.

9. Had it been the case where there were other materials also in favour of the private respondents in both cases showing that they may have a case for being considered as an employee of the appellants, we may not have interfered with the orders impugned and would have left it to the Labour Court to once again to go into the matter(s) on merits. However, when the best defence of the private respondents in both cases, as discussed *supra,* has been found to be totally of no consequence to the private respondents in both cases, we find that the remand would be an exercise in futility.

27. The respondents on the other hand have placed reliance on documents Ex. PW-1/B appointment letter which was issued by respondent no. 2 to the petitioner. The other documents produced by the petitioner himself *i.e.* office order dated 01.06.2010, representations made by the petitioner Ex. PW-1/H, Ex. PW-1/J and Ex. PW-1/K, whereby he had made requests to respondent no. 2 to consider his case for promotion establishes on record that the petitioner was employee of the respondent no. 2.

28. Though, it was strenuously argued by the Ld. Cousnel for the petitioner that the agreements executed between respondents no.1 & 2 have not been produced on record, but the petitioner can not take any benefit from lacuna left in the case of the respondents. Petitioner himself has admitted that he was engaged by respondent no. 2 and his services were also terminated by respondent no. 2. It is also admitted case that the respondent no.2 has no office in the State of Himachal Pradesh and since the petitioner has not been able to establish on record that he was appointed by respondent no.1 and he was working under the direct control and supervision of respondent no.1, it can not be considered that respondent no.1 is the employer of the petitioner.

29. Now, coming to other limb of arguments as advanced on behalf of respondent no. 2. Ld. Counsel for respondent No. 2 has strenuously argued that this Court/Tribunal has no territorial jurisdiction to try and adjudicate the claim of the petitioner against respondent no.2 as neither the petitioner was appointed within the jurisdiction of this Tribunal nor he was dismissed from service within the jurisdiction of this Tribunal. If the appointment letter which has been placed on record by the petitioner himself as Ex. PW-1/B is seen it has been specifically mentioned in the appointment letter that the appointment shall be effective from the date of petitioner joining duties at Sahibabad office for JUIT, Waknaghat office. Apart from this in clause 7.14 it was specifically mentioned that the petitioner had to report for duty at Sahibabad office for JUIT Waknaghat Office. Appointment letter Ex. PW-1/B establishes on record that the petitioner had joined his duties with respondent no. 2 at Sahibabad. It is admitted by petitioner that his services were terminated by respondent no. 2 at Sahibabad office. Though, the petitioner has claimed that his transfer order was not communicated to him, but during cross-examination he has admitted that Shri Vinay Pathak had sent him e-mail on 9.4.2019 (wrongly written as 9.4.2023 whereas the e-mail is dated 4.9.2019, which is mark RX-3). Petitioner has also admitted that he visited the company at Sahibabad though he has denied that he refused to accept the transfer order, but he has admitted that his services were terminated by respondent no. 2 at Sahibabad. The receipt of e-mail dated 4.4.2019 has been admitted by the petitioner which has been placed on record as Mark RX-3 whereby the petitioner was directed to report at Sahibabad on 9.4.2019. Admittedly, transfer order was passed by

respondent no. 2. Even if for the sake of arguments, it is considered that the respondent no. 2 has not complied with the mandatory provisions of the Act while terminating the services of the petitioner, even then this Tribunal cannot ignore the fact that neither the petitioner was appointed within territorial jurisdiction of this Court nor his services were terminated within the jurisdiction of this Tribunal. Simply because at one point of time the petitioner was deputed by respondent no. 2 to work with respondent no.1 within the jurisdiction of this Tribunal, is not enough to invoke the territorial jurisdiction of this Tribunal to entertain the claim filed by the petitioner against respondent no. 2.

30. Admittedly, the services of the petitioner were transferred from the office of respondent no.1 by respondent no. 2 *i.e.* before the issuance of termination order. The petitioner has not challenged his transfer orders through this reference but has challenged his termination of services by respondents no. 1 & 2 and reference in this regard was received by this Tribunal. No reference was sent to this court about the transfer orders of the petitioner.

31. Ld. Counsel for the petitioner had placed reliance on the judgment of Hon'ble Apex Court in case titled as **Bikash Bhushan Ghosh and ors Vs. Novaratis India Ltd., and Ors., 2007-II-LLJ 837**, however, the facts of this case authority are quite different from the facts in hand. In that case the termination letter was served on the petitioner at Calcutta where the petitioner was stationed and it was held by the Hon'ble Apex Court that the cause of action also arose in Calcutta whereas the State of West Bengal was appropriate Government. But coming to the case in hand, it is admitted fact and categorically admitted by the petitioner during his cross-examination that he was served with the termination letter in the office of respondent no. 2 at Sahibabad. The petitioner had joined duties at Sahibabad office of respondent no. 2, as is evident from appointment letter Ex. PW-1/B and his services were terminated by respondent no. 2 at Sahibabad office. He had also admitted that he had filed a complaint before Labour Commissioner which was compromised but has claimed that Shri Vinay Pathak had asked to give bribe. However, no averments with regard to the bribe has been mentioned in the demand notice or in the statement of claim. Since, the termination order was received by the petitioner from respondent no. 2 at Sahibabad, the ratio of judgment as cited by the Ld. Counsel for petitioner is not applicable to the case in hand.

32. Ld. Counsel for the petitioner has also cited case law as reported in **2022 LLR 827 titled as V.G Jagdishan Vs. M/s Indofos Industries Ltd**. In that case the workman was working as a driver at Ghaziabad and his services were terminated at Ghaziabad. Subsequently, the workman shifted to Dehli and he sent a demand notice challenging his termination to the Head Office at Dehli. Thereafter he filed a claim before conciliation officer Dehli. Respondent raised the objection about maintainability of proceedings at Dehli and it was pointed out that the workman had already raised the same dispute before the Deputy Labour Commissioner, Ghaziabad. The Labour Commissioner, Dehli proceeded further with the proceedings and the dispute was referred to Ld. Labour Court Dehli. The Ld. Labour Court vide award dated 18.4.2006 held that the Labour Court at Dehli has no territorial jurisdiction to decide the case. Feeling aggrieved and dissatisfied with the award, the workman preferred writ petition before the Ld. Single Judge of Hon'ble High Court, who dismissed the writ petition and thereafter LPA was also dismissed by the Ld. Division Bench of the Hon'ble High Court.

33. In this matter the Hon'ble Apex Court had also take note of the decision of Bikash Bhushan Ghosh's case (supra) and held that the decision of that case was not applicable to the facts of this case as in that case it was specifically found that the part cause of action had arisen at both places. The Hon'ble Apex Court has observed that it cannot be said that any part cause of action has arisen at Dehli and appeal was dismissed.

34. In view of the above decision of Hon'ble Apex Court and coming to the case in hand it is evident from record that the petitioner had joined his duties at Sahibabad in the office of

respondent no. 2 and his services were also terminated by respondent no. 2 at Sahibabad office as such no cause of action arose to the petitioner to prefer this claim within territorial jurisdiction of this Tribunal.

35. So far as the transfer order is concerned, it was argued that the petitioner was working at Waknaaghat and he was transferred to Sahibabad, but as has been discussed hereinabove, the petitioner never questioned the orders of transfer and in view of the fact that the transfer of the petitioner to Sahibabad is not an issue under reference and since the order of termination was served to the petitioner at Sahibabad and he was the employee of respondent no. 2, it cannot be held that the termination order of the petitioner or any cause of action qua the termination of the petitioner had occurred within the territorial jurisdiction of this Tribunal as such I am of the considered view that this Court has no jurisdiction to try and entertain the present dispute and the reference is not maintainable before this Tribunal. Ld. Counsel for respondent though has placed reliance on **ILR (2006) 1 Delhi 744, 2003 (1) LLN 48, 2023 SCC Online Del. 5352,** however, since has already been discussed that the transfer of petitioner is not an issue before this Tribunal nor the question of transfer has been referred to this Tribunal for adjudication as such these judgments have not been considered and referred to by this Tribunal.

36. So far as the other authorities cited by the Ld. Counsel for the petitioner *i.e*. **2009 LLR 113, 2009 LLR 121, 2016 LLR 561 as well as authorities citen by Ld. Counsel for respondent no.2 i.e CWP No. 2277 decided on 10.06.2024 HHC 4253, (2018) 12 SCC 294 and (2014) 16 SCC 440**. Are concerned, since this Tribunal has come to the conclusion that this Tribunal has no territorial jurisdiction to try and entertain the present reference and claim filed by petitioner, this Tribunal cannot go into the legality of termination/dismissal as such these authorities have not been discussed in detail by this Tribunal.

37. In view of my foregoing discussion since this Tribunal has come to the conclusion that this Tribunal has no territorial jurisdiction to entertain the reference as such issue no. 3 is answered in favour of the respondents and against the petitioner.

Issues No. 1 & 2.

38. In view of my detailed discussion on issue no. 3, issues no.1 & 2 have becomes redundant and decided accordingly.

Relief

39. In view of my aforesaid discussion under issues no.1 to 3, the claim filed by the petitioner fails and is hereby dismissed being not maintainable. The reference is answered in the aforesaid terms.

40. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 16th day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application No. : 126 of 2022

Instituted on : 24.06.2022

Decided on : 22.07.2025

Jai Ram s/o Sh. Fadhi Ram, r/o Village Kurno, P.O. Narain, Tehsil Rampur, District Shimla, H.P. . . *Petitioner*.

Versus

The Divisional Forest Officer, Rampur Division, Tehsil Rampur, District Shimla, H.P. . .*Respondent*.

Claim petition under the Industrial Disputes Act, 1947

For the petitioner : Shri Bhagwan Chand, Advocate

For the respondent : Shri Manoj Sharma, ADA

AWARD

The present claim petition has been filed by the petitioner directly before this Court under the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. The case of the petitioner as it emerges from the statement of claim is that the petitioner is the permanent resident of Village Kurno, P.O. Narain, Tehsil Rampur, District Shimla, H.P. and he was engaged by the respondent department on daily wages basis w.e.f. September, 1995 and continued as such till 25.04.2000. Petitioner had worked with the respondent regularly and had completed 240 days in each calendar year. Petitioner had worked at Kurnu and Jaarasi Nursery. Respondent all of sudden had terminated the services of the petitioner without assigning any reasons and that too by an oral order. Services of the petitioner were terminated in gross violation of the provisions of Section 25-F of the Act, as neither any notice as required under the Act, has been issued to the petitioner, nor any due compensation in lieu thereof was paid to him. Services of the petitioner were terminated by adopting hire and fire formula which is totally against the provisions of the Act. Petitioner was assured by the respondent department that he would be called for labour work on daily wages basis, but he has not been called for any work. Petitioner has alleged that after his illegal termination, respondent department had engaged a new person in his place in violation of Sections 25-G and 25-H of the Act. Petitioner had filed an original application number 3090/2000 before the Administrative Tribunal, Shimla, but the OA of the petitioner was transferred to the Hon'ble High Court of HP where the same was re-registered as CWP (T) No. 6910/2008 which was decided on 29.07.2010. The Hon'ble High Court of HP while deciding the case of the petitioner has clearly mentioned that the petitioner is permitted to take such remedies as available to him in accordance with law. Petitioner after passing the orders by the Hon'ble High

Court of HP, approached the Labour Commissioner, Shimla. Petitioner has claimed that he is poor and illiterate person. Petitioner had raised demand notice before the Labour-cum-Conciliation Officer, but due to adamant attitude of the respondent department the conciliation proceedings failed and ultimately Labour-cum-Conciliation Officer had sent failure report to the appropriate government, but the same was not referred to this Court. Through, this application, the petitioner has claimed that the respondent department be directed to reinstate the petitioner with all consequential benefits including full back wages and also prayed that respondent be directed to pay Rs. 50,000/- for harassment caused to the petitioner as well as litigation charges of Rs. 25,000/-

3. Notice of this application was sent to the respondent, in pursuance thereof the respondent filed reply wherein they took preliminary objections that the present claim is not maintainable as the petitioner has not completed 240 days in any calendar year and the petition is barred by limitation as the petitioner has approached the Court after 27 years. On merits, it was averred that the petitioner was engaged for seasonal forestry work during September, 1995 in Kurnu Nursery under Forest Range Bahli, however it was denied that he continuously worked up till 25.04.2000. It was averred that petitioner intermittently worked up to 4/2000 at Kurnu Nursery, after that petitioner was asked to report at Jarshi Nursery, but he did not report at Jarshi Nursery. It was claimed that the services of the petitioner were never terminated by the respondent department rather he himself left the work at his own sweet will. Petitioner never completed 240 days in any calendar year and prayed for dismissal of the application.

4. No rejoinder was filed.

5. On the pleadings, this Court formulated the following issues on 16.03.2023.

1. Whether the termination of the services of petitioner by the respondent without complying with the provisions of Industrial Disputes Act, 1947, is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . *OPP*.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . *OPR*.

3. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard the Ld. Counsel for the petitioner and Ld. ADA for the respondent and have also gone through the record with care.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Yes

Relief : Application is answered in negative as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1

9. The onus to prove issue no.1 is on the petitioner.

10. Coming to evidence led by the petitioner, petitioner has stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the claim. He also tendered in evidence copy of demand notice Ex. PW-1/B, order of the Hon'ble High Court of HP Ex. PW-1/C and letter of rejection of conciliation Ex. PW-1/D.

11. During cross-examination, he admitted that he was engaged by the Forest Department on casual basis for seasonal forest work at Bahali Range. He deposed that he worked up to April, 2000. He admitted that after April, 2000 he never worked with the department. He denied that he abandoned the job himself. He deposed that he never challenged the order Ex. PW-1/D passed by the Labour Commissioner. He denied that he had not completed 240 days in any calendar year.

12. This is the entire evidence led by the petitioner.

13. In rebuttal, the respondent examined Shri Hardev Singh Negi, Divisional Forest Officer, Rampur, as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also placed on record the copy of mandays chart Ex. RW-1/B.

14. During cross-examination, he deposed that he used to check the attendance register as well as salary record of the petitioner. He denied that the services of the petitioner have been illegally terminated by the respondent department. He also denied that the petitioner had completed 240 working days in preceding twelve months prior to his termination. He further denied that juniors are still working with the department.

15. This is the entire evidence led by the respondent.

16. From the perusal of case record it is clear that the respondent has objected the claim of the petitioner on the ground that the claim is not maintainable as the same is barred by limitation as petitioner has filed the claim after capes of 22 years, but even if the claim of the petitioner is considered, it was required for the petitioner to have proved that he had completed 240 days in last preceding 12 months before he could take the benefits of the provisions of Section 25-F of the Act.

17. At the time of the arguments, learned ADA for the respondent had contended that the mandays chart Ex. RW-1/A shows that since year 1995 to year 2000 petitioner has not completed 240 days in any calendar year and had only worked for 31 days in the year 2000. Thus, it stand establish that petitioner had not completed 240 days prior to his alleged termination in twelve preceding calendar months.

18. In **Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195)**, it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In **M.P. Electricity Board v. Hariram (2004 (8) SCC 246)** the position was again reiterated in paragraph 11 as follows:

> "**The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the nonproduction of certain relevant documents. This is what this Court had to say in that regard:**
>
> **"A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent**."

19. In **Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100)** a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In **Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165)** it was held as follows:

> "**So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) the onus is on the workman**."

20. In view of the discussion as made hereinabove, since the petitioner has failed to establish on record that he had completed 240 working days in a calendar year, hence, the petitioner is not entitled to any benefit under Section 25-F of the Act. Moreover, the respondent department has established on record that the petitioner was engaged as a casual worker on seasonal basis and he had not completed 240 days in any of the calendar year.

21. The other point which arises for consideration in this case is that whether there is any violation of Section 25-G of the ibid Act which reads as under:

> "***25-G. Procedure for retrenchment***.—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of*

workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

22. To invoke this provision, the workman is not required to prove that he had worked for 240 days preceding to the date of his termination, but it is sufficient for him to plead and prove that while terminating his services, the employer violated the rules of "last come first go". The petitioner has not made any averments in the statement of claim and also did not utter a single word while appearing in the witness box that, who are the newly engaged persons junior to him and when they joined the respondent. Neither there is any evidence to establish on record that juniors have been retained by the respondent in violation of the provisions of Sections 25-G & 25-H of the Act nor there is anything on record to establish that the respondent has violated the principles of "last come first go".

23. In view of my aforesaid discussion, since, the petitioner has failed to prove any contravention of the provisions of the Act, he is not entitled to any relief as such issue no.1 is answered in negative.

Issue No. 2

24. So far as issue no.2 is concerned, it was argued by the Ld. ADA for the respondent that the present claim has been filed by the petitioner directly before this Court which is not maintainable as the petitioner has approached this Court after a period of 22 years. Here, it would be relevant to reproduce Section 2-A of the Act which reads as under:

"**2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—[(1)] Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**

(2) Notwithstanding anything contained in section l0, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

The case set up by the petitioner is that his services were terminated by the respondent *w.e.f.* 25.04.2000 and after his termination he approached the Hon'ble High Court by filing CWP (T) No. 6910 of 2008, whereby the Hon'ble High Court has passed to following order:

"**According to the petitioner his services were orally terminated. This fact is seriously disputed by the respondents. Disputed questions of fact are involved which cannot be adjudicated in the present case under Article 226 of the Constitution of India. Consequently the petitioner is permitted to take recourse such remedies as are available to him in accordance with law. Needful be positively done within a period of eight weeks from today so that limitation does not came in his way"**.

Thereafter, the petitioner has raised the demand notice Ex. PW-1/B on 18.11.2014 after much delay of passing of order dated 27.09.2010 by the Hon'ble High Court and beyond the period of eight weeks as allowed by the Hon'ble High Court whereas the present application was preferred before this Court on 20.06.2023. The mandays chart which has been submitted by the respondent established that the petitioner lastly worked with the respondent in the month of April, 2000, whereas the present claim petition has been filed by the petitioner after the expiry of twenty two years which is hopelessly time barred and not maintainable in view of the provisions of Section 2-A (3) of the Act. Though, learned counsel for the petitioner has placed reliance on **(1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-processing Service Society Limited and Another, Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496, and 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways Hissar,** but all these judgments have been passed by the Hon'ble Courts in reference cases. Whereas, the present claim has been preferred under the provision of Section 2(A) of the Act and since the application has been filed after a lapse of 22 years without there being any averments to justify the delay in filing the application, the same is hopelessly barred in view of the provision of Section 2-A(3) of the Act and the application is not maintainable. Accordingly, issue no. 2 is answered in negative.

Relief

25. In view of my above findings on issues no. 1 & 2, the claim filed by the petitioner fails and is hereby dismissed by holding that the petitioner is not entitled to any relief as claimed. The application is answered in the aforesaid terms.

26. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 22nd day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

App. No. 150/2025

Wipro Karamchari Sangh

Versus

FM, M/s Wipro Enterprises, Solan

22.07.2025
Present : Sh. R.K. Khidtta, Ld. Csl. for the petitioner

Sh. Rahul Mahajan, Ld. Csl. for the respondent

At this stage, a joint application has been filed by the parties, stating therein that during the pendency of this case both the parties have amicabelly settled the dispute and have arrived into a settlement dated 16.07.2025 under Section 12(3) of the Industrial Disputes Act 1947 read with Industrial Disputes Rules, 1974. It has been prayed that in view of the aforesaid settlement, the application be allowed to be withdrawn.

Statement of the President of worker union Sh. Amid Khan, has been recorded who has been identified before me by Sh. R.K. Khidtta, Advocate. He has deposed on oath that he is president of the worker union and he has been authorized to give statement on behalf of the petitioner union. He further deposed that the parties have entered into compromise Ex. CA which may be considered as part and parcel of his statement. He further deposed that petitioner union as well as respondent have agreed that this settlement Ex. CA shall be binding upon them. He further stated that, in view of Ex. CA, he wants to withdraw the present application.

Similar statement has been recorded separately made by the Factory Manager of the respondent, Sh. Ankush Kichloo, who has been identified before me by Sh. Rahul Mahajan, Advocate. The Factory Manager has placed on record his GPA Ex. CB and admitted the statement made by the Sh. Amid Khan, Presidnet of worker union to be correct.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. CA and the petitioner union is not interested to proceed further this application, the application Under Section 33-A of the Industrial Disputes Act is dismiss as withdrawn. Miscellaneous applications filed by the petitioner, if any, becomes infatuate and same are also dismiss. The miscellaneous applications be registered and tagged with the main case file.

Let a copy of this order along with statement of petitioner and that of respondent be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
22.07.2025

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla (H.P.).

Reference No. 68/2023

Wipro Karamchari Sangh

Versus

The Occupier/ FM, M/s Wipro Enterprises, Solan

22.07.2025

Present : Sh. R.K. Khidtta, Ld. Csl. for the petitioner

Sh. Rahul Mahajan, Ld. Csl. for the respondent

A joint application for settlement of the reference received under Section 10 (1) of the Industrial Disputes Act, 1947 from the appropriate government vide notification no. 11-2/93 (Lab) ID/2023/Baddi, dated 01.03.2023 sent by Deputy Labour Commissioner for adjudication, which was registered before this Court as reference No. 68/2023 has been filed. It is averred in the application that during the pendency of the case both the parties have settled the dispute and have arrived into a settlement dated 16.07.2025 under Section 12(3) of the Industrial Disputes Act 1947 read with Industrial Disputes Rules 1974. It has been prayed through this application that award be passed in terms of the settlement arrived between the parties.

The President of worker union Sh. Amid Khan, who has been identified before me by Sh. R.K. Khidtta, Advocate has deposed on oath that he is the president of the petitioner worker union and has been authorized to give statement on behalf of the petitioner union. He further deposed that petitioner union and respondent management have entered into compromise/ settlement under Section 12(3) of the I.D. Act vide Ex. CA (8 leaves) which has been signed by him as well as some other workers out of their free will, which the petitioner union admitted to be correct. On behalf of respondent management Sh. Ankush Kichloo, Factory Manager has also put his signatures on the same. He further deposed that settlement has been entered between the parties without any pressure which they admitted the same to be correct. He further deposed that since the matter has been settled, the reference be disposed off in terms of settlement Ex. CA. To this effect his statement has been recorded separetly and placed on case file.

Vide separate statement the Factory Manager of the respondent company, Sh. Ankush Kichloo who has been identified before me by Sh. Rahul Mahajan, Advocate, has placed on record his GPA Ex. CB and admitted the statement made by the Sh. Amid Khan, President of worker union to be correct and binding on the respondent company. He further deposed that the reference be accordingy answered in terms of the compromise/ settlement Ex. CA.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. CA, therefore, nothing survive in this application. Accordingly, the joint application filed by the parties for settlement of case in terms of Ex. CA is allowed. Resultently, the reference is answered accordingly in terms of settlement Ex. CA. The statements of Sh. Amid Khan, President of the worker union and Sh. Ankush Kichloo, Factory Manager, for the respondent company, as well as Ex. CA shall form part and parcel of this award. Pending applications, if any, are also disposed off accordingly. It be registered and tagged with the main case file.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
22.07.2025

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla (H.P.).

Reference No. 180/2021

Pradhan/ Secretary, Wipro Karamchari Sangh

Versus

The Occupier/ FM, M/s Wipro Enterprises, Solan

22.07.2025
Present : Sh. R.K. Khidtta, Ld. Csl. for the petitioner

Sh. Rahul Mahajan, Ld. Csl. for the respondent

A joint application for settlement of the reference received under Section 10 (1) of the Industrial Disputes Act, 1947 from the appropriate government vide notification no. 11-2/93(Lab) ID/2021-Baddi, dated 13.08.2021 sent by Joint Labour Commissioner for adjudication, which was registered before this Court as reference No. 180/2021 has been filed. It is averred in the application that during the pendency of the case both the parties have settled the dispute and have arrived into a settlement dated 16.07.2025 under Section 12(3) of the Industrial Disputes Act 1947 read with Industrial Disputes Rules 1974. It has been prayed through this application that award be passed in terms of the settlement arrived between the parties.

The President of worker union Sh. Amid Khan, who has been identified before me by Sh. R.K. Khidtta, Advocate has deposed on oath that he is the president of the petitioner worker union and has been authorized to give statement on behalf of the petitioner union. He further deposed that petitioner union and respondent management have entered into compromise/ settlement under Section 12(3) of the I.D. Act vide Ex. CA (8 leaves) which has been signed by him as well as some other workers out of their free will, which the petitioner union admitted to be correct. On behalf of respondent management Sh. Ankush Kichloo, Factory Manager has also put his signatures on the same. He further deposed that settlement has been entered between the parties without any pressure which they admitted the same to be correct. He further deposed that since the matter has been settled, the reference be disposed off in terms of settlement Ex. CA. To this effect his statement has been recorded separetly and placed on case file.

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union to be correct and binding on the respondent company. He further deposed that the reference be accordingy answered in terms of the compromise/ settlement Ex. CA.

Since the matter stood amicably settled between the parties, by way of amicable settlement Ex. CA, therefore, nothing survive in this application. Accordingly, the joint application filed by the parties for settlement of case in terms of Ex. CA is allowed. Resultently, the reference is answered accordingly in terms of settlement Ex. CA. The statements of Sh. Amid Khan, President of the worker union and Sh. Ankush Kichloo, Factory Manager, for the respondent company, as well as Ex. CA shall form part and parcel of this award. Pending applications, if any, are also disposed off accordingly. It be registered and tagged with the main case file.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record room.

Announced:
22.07.2025

Sd/-
(ANUJA SOOD),
Presiding Judge,
Labour Court, Shimla (H.P.).

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference No. : 162 of 2017

Instituted on : 02.11.2017

Decided on : 22.07.2025

Prem Singh & other 20 workers, c/o Sh. Prem Singh s/o Sh. Durga Singh, r/o Village Lundhra, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioners*.

Versus

The Factory Manager, M/s Sun Pharma Industries Ltd. Hill Top Industrial Area, Khasra No. 134-1342, Village Bhatoli Kalan, P.O. Barotiwala, Tehsil Nalagarh, District Solan, HP.

. . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioners : Shri R.K. Khidtta, Advocate

For the respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference was received for adjudication from the appropriate Government:

"**Whether demand raised by Sh. Prem Singh & other 20 workers, (List-Enclosed) c/o Sh. Prem Singh s/o Sh. Durga Singh, r/o Village Lundhra, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. (Pin:175015) vide demand notice dated 15.02.2017 (copy enclosed) before the management of M/s Sun Pharma Industries Ltd. Hill Top Industrial Area, Khasra No. 1341-1342, Village Bhatoli Kalan, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P. for fulfilling, are proper and justified? If yes, what relief of service benefits and other monetary benefits the aggrieved workmen are entitled to from the above management?"**

2. The case as set up by the petitioners is that petitioner no. 1 was engaged as manufacturing assistant *w.e.f.* 06.06.2012 and worked as such continuously till 16.01.2017, petitioner no. 2 was engaged as manufacturing assistant *w.e.f.* 12.05.2014 and worked as such continuously till 16.01.2017, petitioner no. 3 was engaged as manufacturing assistant w.e.f. 01.07.2014 and worked as such continuously till 16.01.2017, petitioner no. 4 was engaged as manufacturing assistant *w.e.f.* 01.08.2013 and worked as such continuously till 16.01.2017, whereas the petitioner no. 5 was engaged as manufacturing assistant w.e.f. 08.04.2013 and worked as such continuously till 16.01.2017. All the machines installed in second liquid line were removed by the respondent from Baddi Plant in the month of November, 2016 and were installed in Devas Plant of the respondent company at Madhya Pradesh and thereafter except petitioner no. 1, all other petitioners were transferred to state of Sikkim orally as no transfer letter was given to the petitioners and petitioners were not allowed to work at Baddi and the gate of the company was closed for the petitioners. All the petitioners raised objection regarding removal of the machines from Baddi plant to Devas plant of the respondent company in Madhya Pradesh and also gave in writing to the Labour Officer, Baddi, District Solan, H.P. Respondent company was summoned by the Labour Officer, Baddi vide letter dated 14.12.2016. Due to objections raised by the workers regarding the removal of the machines from Baddi plant to Madhya Pradesh plant, some of the workers were orally transferred to the state of Sikkim just to teach them a lesson. The management in place of allowing the workers to work in the company obtained stay order from the Civil Court, Nalagarh from restraining the workers to raise any slogans within 500 meters from the company premises and the workers were not allowed to work in the factory. Due to the adamant attitude of the respondent company the workers were compelled to raise the demand notice before the Labour-cum-Conciliation Officer, Baddi. Respondent company was summoned by the Labour Officer-cum-Conciliation Officer Baddi. Respondent company was summoned by the Labour-cum-Conciliation Officer, Baddi where the company filed reply to the demand notice raised by the petitioners, however, in place of allowing the workers to work in the factory, the respondent company leveled false allegations against the petitioners/workers and illegally terminated the services of the petitioners/workers during the pendency of the dispute between the parties which is in utter violation of the provisions of Section 33 of the Act. The termination orders passed by the respondent company are illegal which deserves to be quashed. The petitioner and other workers continuously visited the respondent company till the date of their illegal termination orders dated 09.08.2017, but they were not allowed to work in the factory. The demands raised by the petitioners and other workers in the demand notice dated 15.02.2017 are totally genuine which deserves to be allowed. The petitioners/workers were performing their duties honestly, but the

respondent company has terminated the services of the petitioner with malafide intention. It has been prayed through this claim that the respondent company be directed to accept all the demand raised in the demand notice dated 15.02.2017 as well as the petitioners who were illegally terminated from service be re-instated with the respondent company along-with full back wages. The claim is duly supported with an affidavit of Shri Prem Singh.

3. Notice of this claim was sent to the respondent company, in pursuance thereof, respondent contested the claim by filing reply. Apart from taking preliminary objection, that the petition is not competent or maintainable, petitioners have concealed material facts and petitioner had refused to receive transfer orders, petitioner have made averments beyond the terms of reference which are not maintainable and cannot be looked into by this Court, petitioners have not approached the Court, the petitioners are gainfully employed and the transfer is inherent right of the employer as per the terms and conditions of the appointment letter. On merits, it was averred that the petitioner no.1 was engaged on 18.06.2012 and his services were dismissed after conducting a domestic enquiry on 09.08.2017. Petitioner no. 2 as engaged on 12.05.2014 as manufacturing assistant production and his services were dismissed after conducting a domestic enquiry on 9.8.2017, petitioner no. 3 was appointed as manufacturing assistant production on 22.07.2014 and his services were dismissed after conducting a domestic enquiry on 09.08.2017, petitioner no. 4 was appointed as manufacturing assistant production on 05.08.2013 and his services were dismissed after conducting a domestic enquiry on 09.08.2017 and petitioner no. 5 was appointed as manufacturing assistant production on 08.10.2012 and his services were dismissed after conducting a domestic enquiry on 09.08.2017. Petitioners no.2 to 5 had accepted the terms and conditions of the appointment letters, and their transfers have been made as per the terms of the appointment letters. It was submitted by the respondent that ready mix machine numbering two were shifted from Sun Pharmaceutical Industrial Ltd., Hill Top Industrial Area, Village Batoli Kalan, PO Barotiwala, Tehsil Nalagarh, District Solan to Sun Pharmaceutical Industrial Ltd., Industrial Area 3 A B Road, Dewas (MP). Petitioners no. 2 to 5 were transferred vide transfer letters dated 10.01.2017 from Sun Pharmaceutical Industrial Ltd., Hill Top Industrial Area, Village Batoli Kalan, PO Barotiwala, Tehsil Nalagarh, District Solan to Sun Pharmaceutical Industrial Ltd., Plot Nos. 107- 108 Namli Block, PO Ranipool Gangtok Sikkim, but they refused to receive the transfer orders. Petitioners no.2 to 5 in terms of transfer orders were relieved on 13.01.2017 and they were asked to report at transferred place on 20.01.2017. Petitioners no. 2 to 5 were transferred in terms of appointment letter, but they failed to join at the transferred place. Reminders were issued to petitioners no. 2 to 5 on 30.01.2017 and 13.02.2017 in order to join at the transferred place, but they have failed to join at the transferred place, thereafter they were chargesheeted. An enquiry was ordered to be conducted but despite notices regarding the date, time and place of enquiry petitioners no. 2 to 5 failed to join the enquiry and they were proceeded against ex-parte. After the conclusion of the enquiry 2nd show cause notice was issued along-with the copy of enquiry report which was sent to petitioners no. 2 to 5, but no reply was submitted by the petitioners no.2 to 5 as such their services were dismissed vide letter dated 09.08.2017. It was claimed by the respondent that the transfer does not amount to change in service conditions. The respondent has right to transfer the workers as per clause 8 of the appointment letter. It was further averred by the respondent that petitioner no.1 was dismissed from service for misconduct which was levied *vide* chargesheet dated 19.04.2017. Petitioner no.1 had replied to chargesheet but his reply was found to be unsatisfactory and thereafter the respondent decided to conduct domestic enquiry and enquiry officer was

appointed who informed the date, time and place of enquiry to petitioner no.1, but he failed to appear in the enquiry. Thereafter, the enquiry officer issued publication in newspaper dated 16.6.2017 to secure the presence of petitioner no.1, but he did not appear before the enquiry officer and was proceeded *ex-parte*. The charges leveled against petitioner no.1 stood proved and thereafter 2nd show cause notice was issued along-with enquiry report but no reply was filed. Thereafter the services of petitioner no.1 were dismissed on 9.8.2017. It was admitted by the respondent that they had file reply to demand notice dated 15.02.2017 and reiterated that the transfers were made as per the terms and conditions of the appointment letters. It was denied by the respondent that any violation of Section 33 of the Act has been made by the respondent and claimed that the failure to report on duty amounts to misconduct and no dispute was pending at the time of dismissal of services. It was disputed that petitioners no.2 to 5 were transferred with malafide intentions rather it was claimed that transfers were bonafide as reasons for transfers were mentioned in the transfer letters. It was averred that there was strike in the respondent unit w.e.f. 17.01.2017, which continued till March, 2017. Petitioner no.1 instigated the workers not to do work and also instigated them to participate in the strike, Dharna, demonstrations, raising slogans and blocking the ingress and egress of the factory. After conducting enquiries, the services of the petitioners were dismissed. It was denied that the respondent factory has involved into unfair labour practice and prayed for the dismissal of the claim.

4. Petitioner filed rejoinder in which they denied the preliminary objections and reiterated the averments as made in the claim petition.

5. On the pleadings, this Court formulated the following issues on 11.10.2018.

1. Whether the demand raised by the petitioners vide demand notice dated 15.02.2017 before the respondent management are proper and justified, as alleged? . . *OPP*.

2. If issue no. 1 is proved in affirmative, to what relief of service and monetary benefits the petitioners are entitled? . . *OPP*.

3. Whether the petition is neither competent nor maintainable, as alleged? . . *OPR*.

4. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. I have heard Ld. Counsel for the parties and also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Yes. Entitled for re-instatement with seniority and continuity but without back wages.

Issue No. 3 : No

Relief : Reference is partly answered in affirmative as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. Coming to evidence led by the petitioners, Sh. Prem Singh, has stepped into the witness box as PW-1 and led his evidence by way of affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the petition. He was also tender in evidence copy of letter dated 14.12.2016 issued by the Labour Officer Baddi to the Factory Manager Sun Pharma Industries Ltd. Ex. PW-1/B, demand notice Ex. PW-1/C, reply to the demand notice Ex. PW-1/D and termination letter dated 09.08.2017 Ex. PW-1/E.

11. During cross-examination, he admitted that he had refused to receive the letter dated 14.03.2017 and thereupon it was send by registered post vide Ex. R-1. He also admitted that he had sent a reply to the letter dated 07.04.2017 vide Ex. R-2. The reply thereof Ex. R-3 was also sent by him. He admitted that his permanent address is the same as mentioned in the letter. He admitted that chargesheet Ex. R-4 was issued to him and he had filed a reply to the chargehseet vide Ex. R-5. He admitted that he had written another letter dated 11.05.2017 to the company vide Ex. R-6. He also admitted that vide order dated 05.05.2017 he was informed that Sh. Sanjeev Sharma, Advocate had been appointed as Inquiry Officer vide Ex. R-7. He further admitted that inquiry officer had informed him vide letters dated 09.05.2017, 17.05.2017 and 26.05.2017 Ex. R-8 to Ex. R-10 but he had not appeared before the inquiry officer. He showed ignorance that the inquiry officer had issued publication for his appearance in Punjab Kesari and Divya Himachal on 16.06.2017. He showed ignorance that he was proceeded against ex-parte in the enquiry. He admitted that he had received second show cause notice from the company along with inquiry report. He deposed that he had not filed any reply to this notice. He also admitted that he had received termination letter Ex. P-4. He admitted that he is working in Nector Life Science Baddi and getting salary of Rs. 14,000/-. He denied that the respondent company terminated his services after a proper inquiry. He admitted that the demand notice only pertains to the transfer of certain employees.

12. Other witness examined by the petitioner, Sh. Ranjeet Singh, appeared into the witness box as PW-2 and led his evidence by way of affidavit Ex. PW-2/A, which is just a reproduction of the averments as made in the claim.

13. During cross-examination, he admitted that he had given his permanent address in the employment form which submitted to the respondent company. He denied that he was transferred to Gangtok by the respondent company vide mark-Z. He deposed that he never refused to receive the transfer order. He showed ignorance that registered letter was sent by the company on his permanent address. He also showed ignorance that letters dated 30.01.2017 and 13.02.2017 were also sent to him, by the respondent. He further showed ignorance that company had sent

chargesheet dated 10.07.2017 for not joining at Sikkim vide mark-Z-4. Self stated that he had not received the letter as Tehsil is wrongly mentioned. He showed ignorance that Hardesh Sharma had been appointed as an inquiry officer. He deposed that he had not received letter mark-Z-6 to mark-Z-8 from the inquiry officer, but admitted that the address in these letters was correct. He showed ignorance that publication was also issued on 16.06.2017 for his appearance. He showed ignorance that thereafter he was proceeded against ex-parte. He admitted that an amount of Rs. 23,019/- had been deposited in his account. He admitted that he had signed the demand notice and further admitted that demand notice was pertaining to transfer. He admitted that he is now working in Signature Polytechnic Industries Dehradun and further admitted that he is earning Rs. 14,000/- per month.

14. Sh. Pinku Bahadur, appeared into the witness box as PW-3 and led his evidence by way of affidavit Ex. PW-3/A, which is just a reproduction of the averments as made in the claim.

15. During cross-examination, he admitted that he never refused to take transfer order nor he knew that he had been transferred to Sikkim. He showed ignorance that respondent company had issued letters Mark A-4 & Mark A-5. He showed ignorance that company had issued chargehseet dated 10.04.2017 but admitted that address on the registered letter mark-A-7 is correct. He showed ignorance that Hardesh Sharma had been appointed as an inquiry officer. He deposed that he had not received the letters issued by the inquiry officer dated 10.05.2017, 24.05.2017 and 02.06.2017 mark-A-10 to mark-A-12. He admitted that the address on these letters was correct. He showed ignorance that the publication for his presence was also issued and thereafter he was proceeded against ex-parte. He deposed that there was a lock out but they had not made any complaint in writing about the lock out. He admitted that he is now working in Innova Captab, Baddi and is earning was Rs. 14,000/- per month.

16. Sh. Bintu, appeared into the witness box as PW-4 and led his evidence by way of affidavit Ex. PW-4/A, which is just a reproduction of the averments as made in the claim.

17. During cross-examination, he also showed ignorance that company had issued a letter dated 30.01.2017 and 13.02.2017 vide mark-B-4 and mark-B-5. He further showed ignorance that company had sent a chargesheet on dated 10.04.2017 for not joining at Sikkim. He showed ignorance that Hardesh Sharma was appointed as an inquiry officer. He stated that he had not received any letters issued by the inquiry officer mark-B-8 to mark-B-10 but admitted that the address on these letters was correct. He showed ignorance that publication was also issued to secure his presence in the inquiry proceeding. He denied that he had received second show cause notice along with inquiry report. He admitted that he is now working in Ziess Pharma, Jammu and is earning Rs. 16,000/- per month.

18. This is the entire evidence led by the petitioners.

19. In rebuttal, the respondent has examined Shri Sanjeev Sharma, Inquiry Officer, as RW-1, who also led his evidence by way of affidavit Ex. RW-1/A, vide he deposed that he was appointed as an inquiry officer vide letter dated 05.05.2017 Ex. RW-1/B. Thereafter, he issued notice to petitioner no. 1, but petitioner no. 1 failed to turn up on the date, time and placed of

enquiry. He further deposed that notice regarding the date, time and placed of inquiry was also published in Divya Himachal on 16.06.2017. Inspite of publication of the notice petitioner no. 1 did not appear and thereafter he was proceeded against ex-parte. He further deposed that inquiry was conducted as per the principle of natural justice and the model standing orders. He also placed on record notice sent to the respondent no. 1 Ex. R8 to Ex. R10, postal receipts Ex. RW-1/C, Ex. RW-1/D and Ex. RW-1/E, notice published in newspaper intimating the date of enquiry Ex. RW-1/F and Ex. RW-1/G, enquiry proceedings Ex. RW-1/H and enquiry report Ex. RW-1/J.

20. During cross-examination, he deposed that he remained associated with respondent company since, 2017. He deposed that he had only summoned the worker, as the management had appeared before him at its own. He deposed that he had summoned the petitioner on his home address as per Ex. R-8 to Ex. R-10. He deposed that the summons were issued on the correct address of petitioner no.1, but he did not appear despite notice and publication Ex. RW-1/F and Ex. RW-1/G, thereafter, he was proceeded against ex-parte. He denied that he had travelled beyond the issues in conducting the inquiry.

21. Other witness examined by the respondent company, Sh. Hardesh Sharma, inquiry officer, appeared into the witness box as RW-2 and led his evidence by way of affidavit Ex. RW-2/A, he deposed that he was appointed as an inquiry officer vide letter dated 05.5.2017 to conduct the inquiry against the petitioners namely Deepak Kumar, Ranjeet Singh, Pinku Bahadur and Bintu but depiste notices petitioners no. 2 to 5 failed to turn up on the date, time and place of enquiry. When they did not appear despite publication made in the newspapers, they were proceeded against ex-parte. He further deposed that enquiry was conducted as per the principles of natural justice and model standing orders. He also placed on record chargesheets of Pinku Bhadur Ex. RW-2/B, Ranjeet Ex. RW-2/C, Bintu Kumar Ex. RW-2/D, Deepak Kumar, Ex. RW-2/E. Appointment letters for conducting enquiry in respect of Pinku Bhadur Ex. RW-2/F, Ranjeet Ex. RW-2/G, Bintu Kumar Ex. RW-2/H, Deepak Kumar Ex. RW-2/J, letter intimating the time and placed on enquiry along with postal receipts to Pinku Bhadur Ex. RW-2/K, Ranjeet Ex. RW-2/L, Bintu Kumar, Ex. RW-2/M, Deepak Kumar, Ex. RW-2/M. List of witnesses, statements of witnesses, statement of closing the evidence of management, submission of enquiry report along with enquiry report and enquiry proceedings with regard to Pinku Bhadur are Ex. RW-2/O. List of witnesses, statement of witnesses, statement of closing the evidence of management, submission of enquiry report along with enquiry report and enquiry proceedings with regard to Ranjeet is Ex. RW-2/P. List of witnesses, statements of witnesses, statement of closing the evidence of management, submission of enquiry report along with enquiry report and enquiry proceedings with regard to Bintu Kumar is Ex. RW-2/Q. List of witnesses, statements of witnesses, statement of closing the evidence of management, submission of enquiry report along with enquiry report and enquiry proceedings with regard to Deepak Kumar as Ex. RW-2/R.

22. During cross-examination, he deposed that he had sent registered letters to the petitioners about the date fixed for enquiry whereas the management representative was informed telephonically. He denied that the publication had not made in the local newspapers widely circulated in the local address where the petitioners no. 2 to 5 were residing. He denied that he had conducted the enquiry as per the directions of the management. He admitted that civil suit was filed

by the respondent company against the petitioners at Nalagarh and Sh. Rajeev Kumar Sharma was counsel for the respondent company.

23. Sh. Uday Kumar Singh, appeared into the witness box as RW-3 and led his evidence by way of affidavit Ex. RW-3/A, which is just a reproduction of the averments as made in the reply. He also placed on record Power of Attorney as Ex. RW-3/B, appointment letter of Prem Singh Ex. RW-3/C, appointment letters of Deepak Kumar Ex. RW-3/D & Ex. RW-3/E, appointment letters of Ranjeet Singh Ex. RW-3/F & RW-3/G, appointment letters of Pinku Bhadur Ex. RW-3/H & Ex. RW-3/J, appointment letters of Bintu Kumar Singh Ex. RW-3/K & Ex. RW-3/L, transfer order of Pinku Bhadur Ex. RW-3/M and postal receipt in red circle Ex. RW-3/N, transfer order of Ranjeet Singh Ex. RW-3/O, transfer order of Deepak Kumar Ex. RW-3/P, chargesheet issued to the Pinku Bhadur already Ex. RW-2/B and postal receipts Ex. RW-3/Q and RW-3/Q-1, chargesheet issued to the Prem Singh already Ex. RW-2-4 and postal receipt Ex. RW-3/R, letter dated 07.04.2017 already Ex. R-2 and postal receipt Ex. RW-3/S, letter dated 15.03.2017 already Ex. R-1 and postal receipt Ex. RW-3/T, chargesheet dated 10.04.2017 already Ex. RW-2/D and postal receipt Ex. RW-3/U, charge sheet dated 10.04.2017 already Ex. RW-2/C and postal receipt Ex. RW-3/V, charge sheet dated 10.04.2017 already Ex. RW-2/E and postal receipt Ex. RW-3/W, letter appointing enquiry officer are already Ex. RW-2/F, Ex. RW-2/J, Ex. Rw-2/H and Ex. RW-2/G, post applied form of Pinku Bahadur Ex. RW-3/X, post applied form of Ranjeet Singh Ex. RW-3/X-1, post applied form of Deepak Ex. RW-3/X-2, post applied form of Bintu Ex. RW-3/X-3, second show cause notice issued to the Ranjeet Singh Ex. RW-3/Y and termination letter Ex. RW-3/Y-1 along with postal receipt Ex. RW-3/Y-2, second show cause notice issued to the Bintu Kumar Ex. RW-3/Z and postal receipt Ex. RW-3/Z-1 and termination letter Ex. RW-3/Z-2 along with postal receipt Ex. RW-3/Z-3, second show cause notice issued to the Deepak Kumar Ex. RW-3/Z-4 along with postal receipt Ex. RW-3/Z-5 and termination letter Ex. RW-3/Z-6 and postal receipt Ex. RW-3/Z-7, second show cause notice issued to the Pinku Bhadur Ex. RW-3/Z-8 along with postal receipt Ex. RW-3/Z-9 and termination letter Ex. RW-3/Z-10 along with postal receipt Ex. RW-3/Z-11, second show cause notice issued to Prem Singh mark-R-11 and termination letter Ex. RW-3/Z-12 along with postal receipt Ex. RW-3/Z-13, order dated 20.01.2017 of Ld. Civil Judge mark-RX and reply to demand notice mark-RX-1.

24. During cross-examination, he admitted that Prem Singh was engaged as manufacturing assistant and he worked *w.e.f.* 06.06.2012 till 16.01.2017. Self stated that thereafter he participated in the strike. He also admitted that Deepak Kumar was engaged on 12.05.2014 but denied that he worked up till 16.01.2017. He also admitted that Ranjeet Singh was engaged on 01.07.2014 but denied that he worked up till 16.01.2017. He also admitted that Pinku was engaged on 01.08.2013 but denied that he was worked up till 16.01.2017. He also admitted that Bintu was engaged on 08.04.2013 but denied that he was worked up till 16.01.2017. He denied that petitioners no. 2 to 5 were transferred to Sikkim orally. He admitted that petitioner and other workers had raised demand notice Ex. PW-1/C. He admitted that demand notice was replied vide Ex. PW-1/D. He denied that during pendency of demand notice, services of the petitioners were terminated by the respondent management. He denied that petitioner Prem Singh never instigating any co-worker to remain absent from the duty. He admitted that no inquiry has been conducted against the petitioners no. 2 to 5 by Sikkim Unit. He denied that no transfer letter was received by petitioners. He denied that petitioners were terminated during the pendency of conciliation proceedings. He admitted that

respondent company had filed a civil suit against the petitioners and other workers in which order Ex. RY was passed.

25. This is the entire evidence led by the respondent.

26. So far as the claim of the petitioners with regard to their demands is concerned, it is admitted fact that the respondent shifted some machines installed in second liquid line from Baddi Plant in the month of November, 2016 and they were installed in Devas Plant of the respondent company at Madhya Pradesh. As per claim, he workers had raised objection and as a counter blast to their objection, petitioners no.2 to 5 were transferred to Gangtok at far of place whereas the services of petitioner no.1 were dismissed after conducting an enquiry during the pendency of the demand notice. No doubt, it has been alleged by the respondent company that petitioner no.1 instigated the workers not to do work and also instigated them to participate in the strike, Dharna, demonstrations, raising slogans and blocking the ingress and egress of the factory and after conducting enquiries, the services of the petitioners were dismissed. It is the case of the respondent that there was strike in the respondent unit w.e.f. 17.01.2017, which continued till March, 2017. From the specific averments made in the reply clearly establishes that between workers and respondent management some dispute was going on, which continued uptill March, 2017. The transfer orders Ex. RW-3/M, Ex. RW-3/O, Ex. RW-3/P and Ex. RW-3/N reads as under:

> **"As you are aware that there is not production activity being carried out at our plant since April, 2016 and we have tried our level best to review all possibilities to run the business which we are not able to do looking to business scenario as such looking to your future carrier and rehabilitation plan were hereby temporarily transfer you from Sun Pharmaceutical Industries Ltd. Baddi to Sun Pharma Laboratories Ltd., Plot No. 107/108, Namli Block, PO Ranipul, Gangtok, East Sikkim Pin 737135, and accordingly your stand relieved from the services of the company effective from 13th jan., 2017.**
>
> **You will be entitled to transfer allowance as per company policy with 15% increase in your basic wages. It is further informed that in addition to this increase you will be also entitled to benefits available to other workmen at new location i.e Sikkim. You may fill travel advance requisition form and take an advance of Rs. 15000 from, account department for necessary arrange. You are advised to report before 20.1.2017 at transferred location."**

27. The aforesaid transfer orders were issued on 10.01.2017 whereby the petitioners no.2 to 5 were directed to be relieved from company on 13.01.2017 and they were required to report at transferred place before 20th Jan., 2017 *i.e.* at the place which is about 1860 KM from Barotiwala where the petitioners no. 2 to 5 were working. The petitioners no.2 to 5 obviously could not have been travel to Gangtok, without reservations and stay arrangements. There is nothing in the transfer orders that any arrangement was made by the respondent company for their reservation and stay at Gangtol. The transfer orders speak volume about the malafide of respondent company in transferring the petitioners no. 2 to 5. Apart from that it is the version of the petitioners no. 2 to 5 that petitioners no.2 to 5 have refused to receive the transfer orders and it is mentioned that the transfer orders were served in the presence of S/Shri Hardev Singh, Neeraj Kumar and SS Chhatar

Singh, but no such person(s) were examined by the respondent company in whose presence the petitioners no. 2 to 5 had refused to receive the transfer orders, to establish on record that the transfer orders were served on the petitioners no. 2 to 5 in their presence on 11.01.2017 as mentioned in the transfer letters. The postal receipts have also not been placed on record to establish that the transfer letters were actually served on the petitioners no. 2 to 5 through post.

28. Petitioners on the other hand have claimed that the transfer orders were oral and the same were not conveyed to them in writing at any point of time. The petitioners have established on record that they had objected to shifting of machines from Barotiwala to Devas in Madhya Pradesh which admittedly were shifted from Baddi to Devas plant and this appears to be the main cause of transferring the petitioners no.2 to 5 from Baddi Plant to Gangtok Plant.

29. The respondent has claimed that as per appointment letters Ex. RW-3/C, Ex. RW-3/D&E, Ex. RW-3/F&G, Ex. RW-3/ H&J and Ex. RW-3/K&L, the petitioners could be transferred to any shift, section, department, office, branch, establishment, unit etc., of Baddi plant or to any new establishment, unit, plant that may come up in future anywhere in India or to any establishment managed or controlled by the company and they would be governed by the rules, regulations, by-laws and all other working conditions and terms of service applicable to that position and/or location to which they may be transferred. No doubt, the respondent has tried to justify the transfer orders issued to petitioners no.2 to 5 on the basis of Clause 8 of appointment letter, however, there is nothing on record to remotely establish that if the respondent was having no production activities at Barotiwala plant then why only four workers were transferred to Gangtok. It is evident from appointment letter of the petitioners no.2 to 5 that they were working with the respondent company on meager salary of about Rs. 10,000/- per month as such the transfers of petitioners no.2 to 5 from Barotiwala plant to Gangtok Plant appears to be with intention to break the workmen's financial backbone. The petitioners have served with the respondent for several years without there being any complaint or disciplinary action against them, till they raised the demand notice. It has been held by the **Hon'ble High Court of Punjab & Haryana in case titled as M/s Crystal Phosphates Ltd., and Anr. Vs. Presiding Officer, Industrial Tribunal, Amritsar & Ors, 2015 LLR 125**7, that:

> **"4. I do not see any contradiction in the two, as displacement overheads and hardship caused by transfer can be taken judicial notice of and requires no special evidence to understand. This is so much true of all transfers and posting which entail undue hardship especially for low salaried persons, besides the terrible prospect of hunting for a room on rent in the place of transfer and shouldering costs of running two establishments that might break the workman's financial backbone. The labour court has found on the evidence on record that there was sufficient room in the management for retention of a Driver at Amritsar. The transfer to Bhatinda or Ludhiana which both far away destinations from Amritsar and that too without specifying either of which stations to report to, was quite clearly a case of victimization and the transfer itself is in colourable exercise of employer's rights. This appears to be the drift and quintessence of the impugned award passed on August 3, 2015 by the Presiding Officer, Industrial Tribunal, Amritsar, granting reinstatement and 50% of the arrears of back wages.**
>
> **5 …….**

6. Entry 7 in the Fifth Schedule to the Industrial Disputes Act, 1947 declares transfer of a workman *mala fide* from one place to another, under the guise of following management policy to be an unfair labour practice. The right to choose the place of posting in the appointment letter may be management's right but the condition cannot be used arbitrarily since all rights must be exercised reasonably. Reasonableness is part of the apparatus in Article 14 which protects public and private employment without any distinction. Appointment letter in private employment are usually one sided and it is the business of the labour courts and Tribunals to set the balance right."

30. To transfer of an employee/worker no doubt is the right of employer, but the same must the exercised reasonably and it cannot be used arbitrarily. In the case in hand, the respondent has not stopped here, but after transferring the petitioners no.2 to 5 to far flung area, respondent conducted enquires against the petitioners and thereafter proceeded to terminate their services. The enquiry was also conducted against petitioner no.1 for misconduct and his services were also terminated during the pendency of demand notice.

31. In view of discussions made above, the transfers of petitioners no. 2 to 5 to a far flung area in Gangtok appears to be a colourable exercise of powers by the respondent under the grab of appointment letters of petitioners no. 2 to 5. If there had been no production activity in the respondent plant at Barotiwala, the respondent would have transferred the other workers also, but it appears that they malafidely only chose petitioners no. 2 to 5 to be transferred to far flung area, thus, the demands raised by the petitioners in their demand notice are proper and genuine.

32. Learned Counsel for respondent strenuously argued that this tribunal cannot go beyond the terms of reference as the reference is only qua the demand raised by the workers as such the Tribunal cannot adjudicate the order of termination in this reference. So far as the plea of Ld. Counsel for respondent is concerned, the same is not acceptable, as it is settled that Tribunal can determine either the whole dispute referred to it or any dispute related to the dispute referred to it. The Tribunal can definitely determine the disputes which are closely linked with the mater referred to the Tribunal as a reference or enquire into the dispute and determine any dispute which is incidental to the reference made to the Tribunal.

33. Coming to the case in hand, admittedly, demand notice was pending and during the pendency of demand notice the services of the petitioners were terminated/dismissed by the respondent. At this stage, it would be appropriate to refer the proviso of Section 33 of the Act which provides as under:

"Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall---

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding……

34. It is apparent from the record that the services of the petitioner were terminated/dismissed vide letters dated 9.8.2017 when the matter was pending before this Court for adjudication. It is quite clear that the petitioners have raised demand notice against the respondent company upon which the respondent company issued transfer letters against petitioners no. 2 to 5 and thereafter their services were dismissed after conducting enquires. The services of petitioner no.1 were also dismissed after conducting enquiry. It is specifically mentioned in the demand notice that respondent company had issued legal notice to some workmen on the pretext of transfer but with the malafide objective just to throw them out from the unit by adopting illegal means. It is also mentioned in the demand notice that since Jan., 2017, the respondent company is not allowing the workers to enter into the company. Thus, it is clear that when the services of the petitioners were dismissed by the respondent company, the reference was pending before this Tribunal, but the respondent company did not take any permission of this Tribunal before dismissing the services of the petitioners as provided under Section 33 of the Act.

35. The Apex Court in case reported in **AIR 2002 SC 643 in case titled as Jaipur Zila Sehkari Bhumi Vikas Bank Ltd. Vs. Ram Gopal Sharma** has held:—

"**The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the**

proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair Labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said provision is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

36. In case reported in **2007 SC 3071 incase titled as united bank of India Vs. Siharth Chokborty** it was held by the Hon'ble Supreme Court that the provisions of section 33 2 (b) are mandatory and non compliance thereof is sufficient to refuse approval and the worker is entitled to reinstatement.

37. The ratio of the aforesaid decisions on application to the facts of this case make it clear that once the dispute was pending before this Tribunal with regard to the transfer of the workers, the respondent company was not competent to dismiss the petitioners from service without the permission of this Tribunal. The orders dismissing the services of petitioners are void as held in **AIR 2007 SC 3071** (supra). The respondent is entitled to be reinstated in service.

38. Thus, it is evident that the services of the petitioners by way of dismissal without permission of this Court is in violation of Section 33 of the Act as such the petitioners are entitled for re-instatement in the services. Accordingly, the dismissal orders issued to the petitioners are hereby set aside and quashed.

39. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the learned counsel for the petitioners. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

40. Moreover, the petitioners were under an obligation to prove by leading cogent evidence that they were not gainfully employed after their dismissal from services. The initial burden is on the workman/employee to show that they were not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"

41. In the instant case, all the petitioners have admitted in their cross-examination that they are working and earning handsomely. Since, it stands proved on record that all the petitioners are gainfully employed, they are not entitle to any back-wages.

42. The Ld. Counsel for the respondent has argued that if the Tribunal comes to the conclusion that the services of the petitioners were illegally terminated by the respondent, then instead of re-instating them in service, lump sum compensation can be awarded to them to meet the ends of justice. He has placed on record reliance the case laws as reported in **(2018) 12 SCC 294 titled as Rashtrasant Tukdoji Maharaj Technical Education Sansthan, Nagpur Vs. Prashant Manikrao Kubitkar, (2014) 16 SCC 440 titled as Bharat Sanchar Nigam Ltd. & Anr., Vs. Kailash Narayan Sharma and (2024)-180 FLR 4901 titled as M/s Kamax Corporation Vs. Raj Kishore**. However, the facts of these authorities are quite different from the facts in hand, as such the ratio of these judgments cannot be applied in the present case. Otherwise also the dismissal of petitioners no.1 to 5 is in contravention of Section 33 of the Act as such the compensation would not be enough and effective remedy for the petitioners and they are required to be re-instated in service on the same place and post from where their services were firstly transferred and thereafter dismissed i.e Barotiwala. (**please see 2007 LLR 1134)**

43. In view of my aforesaid discussion and findings it is held that the petitioners no.2 to 5 are entitled to reinstatement with seniority and continuity at the same place and post from where their services were firstly transferred and thereafter dismissed i.e at Barotiwala, but without back-wages, whereas since it has been found that the dismissal of petitioner no.1 is in contravention to the mandatory provisions of the Act, he is also held entitled to be re-instatement in service with seniority and continuity at the same place from where he was dismissed from service i.e at Barotiwala, but without back-wages. Accordingly, issue no.1 is answered in affirmative whereas issued no.2 is partly allowed in favour of the petitioners.

Issue No. 3

44. Now coming to issue no. 3, there is nothing on record which could go to show as to how this petition is not maintainable. Since, the present claim has been filed pursuant to reference sent to this Court by the appropriate Government for adjudication as such it cannot be said that the claim is not maintainable before this Court. Hence, issue no. 3 decided against the respondent.

Relief

45**.** In view of my findings on issues no.1 to 3 above, the claim filed by the petitioners succeeds and is hereby partly allowed. The respondent company is directed to re-engage the petitioners in service from the date of their dismissal i.e w.e.f. 9.8.2017 on the same place and post i.e at M/s Sun Pharma Industries Ltd. Hill Top Industrial Area, Khasra No. 1341-1342, Village Bhatoli Kalan, P.O. Barotiwala, Tehsil Nalagarh, District Solan, H.P with seniority and continuity but without any back-wages. The reference is answered in the aforesaid terms.

46. Let a copy of this award be communicated to the appropriate Government for publication in the official gazette. The file after due completion be tagged with the main case file.

Announced in the open Court today on this 22nd day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 59 of 2023

Instituted on : 03.05.2023

Decided on : 28.07.2025

Tazin Dolkhar w/o Shri Vinod Kumar, r/o Village Lari, P.O. Tabo, Tehsil Spiti at Kaza, District Lahaul & Spiti, H.P. . . *Petitioner*.

Versus

The Executive Engineer, Jal Shakti Division Spiti at Kaza, District Lahaul & Spiti H.P. . . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate

For the Respondent : Shri Manoj Sharma, ADA

AWARD

The following reference was received for adjudication from the Appropriate Government adjudication:

"Whether the demand raised by the worker Smt. Tazin Dolkhar w/o Sh. Vinod Kumar, r/o Village Lari, P.O. Tabo, Tehsil Spiti at Kaza, District Lahaul & Spiti, H.P before the Executive Engineer, Jal Shakti Division Spiti at Kaza, District Lahaul & Spiti H.P to condone the breaks period of the applicant w.e.f. 10/2016 to onwards in her continuity of service for all purposes including regularization and also pay the back-wages for the break period, is proper and justified? If yes, what relief and consequential service benefits the above aggrieved workman is entitled to from the above management? and if not, its effects?"

2. The case as emerges from the statement of claim is that the petitioner is the permanent resident of Village Lari, PO Tabo, Tehsil Spiti at Kaza, who had been engaged as daily waged

beldar on muster roll basis w.e.f. October, 2016 and worked continuously under respondent. The department used to give artificial/frictional breaks in the daily waged services of the petitioner so that she could not complete the requisite days of working as required in the Tribal area. The department by adopting unfair labour practices had removed and thereafter re-engaged the services of the petitioner orally without issuing any notice in writing indicating the reasons for retrenchment/removal or without paying compensation under the provisions of Industrial Disputes Act (hereinafter to be referred as the Act). It is averred that the petitioner had worked continuously with the department and has completed 180 days in each calendar year of her service tenure, hence, her services were continuous for the purpose of Section 25-B of the Act. The workers who have worked together with the petitioner namely Chhewang Lamo, Narzin Dolma, Chhering Tenzing, Padmo Chodan, Thuktan Kalzang, Dolma Chhering, Dikit Yangzong etc., have been absorbed and engaged by the department but the services of the petitioner were not regularized. The petitioner requested the respondent not to give fictional breaks in her service, but of no avail. The juniors to the petitioner are still working with the department and they have been granted seniority and continuity but the same benefits were not granted to the petitioner. The intentional removal of the petitioner from time to time is in violation of Article 14 and 16 of Constitution of India as the workman was denied equality in the matter of employment. The petitioner has every right to do her job till the age of superannuation. It is prayed that the respondent department be directed to grant seniority and continuity from the date of her initial engagement with full back-wages along-with all consequential service benefits. It is further prayed that the services of the petitioner be ordered to be regularized as per the policy/notification of the State Government issued from time to time in this regard as she has completed more than 14 years of service with the respondent department.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply, wherein preliminary objections have been taken that the petitioner is still working subject to justification of work and availability of funds under JSW Sub Division Tabo, respondent department disengaged the services of the petitioner during extreme winter season every year as the region of Spiti Vally is a high altitude and snow bounded area, as such the development activities remain closed during winter season and the services of the petitioner are not required during winter season. The services of the petitioner were engaged on daily paid basis, as the casual labourers are required to be deployed by the department on various flow irrigation schemes. The services of the petitioner were never retrenched at any point of time by the respondent and the petition is bad for non-joinder of necessary parties. On merits, by reiterating the averments as made in the preliminary objections, the respondent claimed that the services of the petitioner were engaged during November, 2016 followed by succeeding years upto 2022 on seasonal basis and her services have been utilized on seasonal basis as per requirement at site of work subject to availability of funds. It is alleged that the services of the petitioner were terminated/disengaged by the respondent during extreme winter season every year as the region of Spiti Valley is a high altitude and snow bound area as such the development activities remained closed during winter, hence, the services of the petitioner are not required in the department during winter season. It is denied that fictional and artificial breaks were given to the petitioner to deprive her from seniority with 180 days in each calendar year. It is averred that the Government of India has introduced national Rural Employment Guarantee Act, which provides work to every eligible workman at least for 100 days in a year to earn his livelihood and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which she denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 16.09.2023.

1. Whether the demand raised by the petitioner before the respondent to condone the breaks period *w.e.f.* 10/2016 to onwards in her continuity of service for all purposes including regularization and also back wages for the break period, is proper and justified? If so, then what relief and consequential service benefits the petitioner is entitled to? . . *OPP*.

2. Whether the petition is neither competent nor maintainable as alleged? . . *OPR*.

3. Whether the petition is bad for non-joinder of necessary parties, as alleged? . . *OPR*.

4. Relief

6. Thereafter, the parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 Yes Entitled for seniority and continuity but without any back-wages

Issue No.2 No

Issue No.3 No

Relief Reference answered partly in affirmative per operative part of award

REASONS FOR FINDINGS

Issue No.1.

9. The onus to prove issue no.1 is on the petitioner and in order to substantiate her case, petitioner appeared into the witness box as PW-1 and tendered her affidavit (PW1/A) wherein she has reiterated almost all the averments as made in the claim petition. She also tendered into evidence copy of demand notice Ex.PW-1/B.

10. In cross-examination, she admitted that she had worked for some working days as other workers engaged with her. Self stated that the workers who had been engaged with her and even her juniors have been regularized by the department. She denied that she had not attended her duties in the year 2017. She admitted that the department had provided the work to her as per the availability. She denied that she had not made herself available for work. She admitted that she is still working with the department. Self stated that her juniors Dikit Yangzom, Thuktan Kalzang and Dolma Chhering were regularized by the department. She denied that she had not worked for 180 days in a calendar year. Self stated that the department used to give fictional breaks in her service. She denied that she used to remain absent at her own due to which she has not completed 180 days

and after the verdict of Hon'ble Apex Court the present claim has been filed by her to gain undue advantages.

11. Shri Rakesh Kumar, Clerk of respondent has appeared into the witness box as PW-2 and placed on record the list of workers who were engaged in the year 2016 as Ex. PW-2/A, list of workers who are still working with the department since 2017 as Ex. PW-2/B and deposed that the workers who are mentioned in the lists Ex. PW-2/A and Ex. PW-2/B have been regularized.

12. During cross-examination, this witness has admitted that as per record the petitioner has not completed 180 days since 2016 to 2022.

13. This is the entire evidence which has been led by the petitioner.

14. In order to rebut the case of the petitioner, the respondent department has examined Shri Manoj Kumar, Executive Engineer as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chartRW-1/B and notification dated 05.10.2016 Ex. RW-1/C.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent in the year 2016 as beldar and she is continuously working with the department since 2016 till date. He admitted that the workers mentioned in list Ex. PW-2/B are shown to be working with the department since 2017 till date and some of the workers are show to be regularized by the department. He denied that the department had given fictional breaks in the service of the petitioner with intention not to regularize her services.

16. This is the entire evidence which has been led by the respondent.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has contended with vehemence that the services of the petitioner have been engaged by the respondent department on muster roll basis as daily waged beldar in the month of October, 2016 and since the date of her initial engagement, she was working with the respondent department but the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act, which is totally illegal and against the provisions of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department has also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time as she has completed about nine years of daily waged service with the respondent.

18. On the contrary, Shri Manoj Sharma, Ld. ADA has contended that the services of the petitioner have been engaged on rotation/seasonal basis and she is still working with the respondent department. He further contended that neither artificial breaks were given to the petitioner nor pick and choose method was adopted. The work was provided on the availability of work and funds and subject to weather condition of the Spiti Area. The petitioner had not completed 180 days in any of the calendar year and no junior to her was regularized by the department.

19. Coming to the case in hand, there is no denial to the fact that the petitioner was engaged by the respondent as a beldar on muster roll basis w.e.f. October, 2016. It is also proved on record especially with Ex. RW-1/B that she had worked 59 days in the year 2016, 57 days in the

year 2017, 80 days in the year 2018, 75 days in the year 2019, 90 days in the year 2020, 164 days in the year 2021 and 151 days in the year 2022. The claim of the petitioner is that the frictional breaks were deliberately given by the respondent so she could not complete 180 days in a calendar year. The stand of the respondent on the other hand is that the services of the petitioner were disengaged during extreme winter season every year as the region of Spiti Valley is a high altitude and snow bound area. The development activities remain closed during winter season, as such, the services of the petitioner were not required during winter season and she was disengaged due to this reason. No frictional and artificial breaks have not been given to the petitioner. The respondent has claimed that the services of the petitioner have been utilized on seasonal basis as per the requirement every year subject to availability of work and funds and petitioner never raised any objection in this regard.

20. Coming to the evidence led by the parties, RW-1 during his cross-examination has admitted that the workers mentioned in list Ex. PW-1/D are working with the department since 2017 till date and some of the workers have been regularized by the respondent department. The document Ex. PW-2/A established on record that the Dikit Yangzom, Dolma Chhering and Thuktan Kalzang were also engaged in the year 2016 and their services have been regularized. Similarly, *vide* Ex. PW-2/B, seventeen workers are shown to have been engaged in the year 2017 onward and most of the workers are still working with the department. If no work was available for the petitioner, there is no justification for the respondent department to allot the work to Dikit Yangzom, Dolma Chhering and Thuktan Kalzang and regularize their services. The persons mentioned in Ex. PW-2/B are still working with the respondent department since, 2017. It clearly shows that the respondent have given intentionally frictional breaks to the petitioner so that she may not complete 180 days to get benefits of Section 25-B of the Act.

21. From the mandays chart Ex. RW-1/B, it is more than clear that the petitioner is continuously working with the respondent department since 2016 and the respondent department used to give fictional breaks in her service in order to defeat the provisions of section 25-B and 25-F of the Act, which cannot be legalized in any manner. It is not the claim of the respondent that petitioner herself abandoned the job whereas the petitioner has claimed that she was available for the work, but respondent department used to give frictional breaks to her so that she may not complete 180 days in a calendar year. The respondent department has continuously taken work from the petitioner since 2016 to 2020. The State Government vide letter dated 05.10.2016 Ex. RW-1/C has given, directions to provide muster roll to all labourers in the area of Pooh in Kinnaur and Division Kaza in Lahual & Spiti for full month muster roll basis in place of breaks, if sufficient work and funds are available for these persons in that particular areas. The petitioner was working with the respondent department since, 2016 but the respondent department has not complied with the terms of letter Ex. RW-1/C, nor there is any evidence led by the respondent that no funds were available as such the work could not offered to the petitioner for 30 days in a month. Thus, the breaks given in her service by the respondent were definitely frictional breaks. Other workers engaged with the petitioner in the year 2016 or thereafter are continuously working with the department and some of the workers were regularized but the services of the petitioner were not regularized at par with the similar situated persons. Since, it has been proved on record that the petitioner was engaged in the month of October, 2016 by the respondent department, her services ought to have been regularized before her junior were regularized, which would show that other

persons, who had joined along-with her or later on have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. The petitioner being in employment with the respondent since, 2016 was given artificial/ frictional breaks which fact has been established on record, as such she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form the date of her initial joining.

22. Besides, the petitioner could not have been discriminated arbitrarily between similarly situated persons. The petitioner has alleged violation of Section 25-G of the Act and she has deposed that her juniors have been retained, whereas her services were terminated in gross violation of Section 25-G of the Act, which reads as under:

> "***25-G. Procedure for retrenchment***.—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

23. To invoke this provision, the workman is not required to prove that she had worked for 240 days preceding to the date of her termination but it is sufficient for her to plead and prove that while terminating her services, the employer violated the rules of "last come first go". In case **reported in latest HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhatag Ram & Anr. , The Hon'ble High Court has observed** that:- ***"It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act."***

24. With, Ex. PW-2/A it stand establish on record that Dikit Yangzom, Dolma Cheering and Thuktan Kalzang were also initially engaged in the year 2016 and their services have been regularized, whereas Ex. PW-2/B shows that seventeen persons were engaged in the year 2017 and they are still working with the department. It is evident from the statement of RW-1 that the persons shown in Ex. PW-2/B (wrongly mentioned as PW-1/D) are shown to be working with the department and some of the workers are shown to be regularized. It is clearly establish on record that the provisions of Section 25-G of the Act were violated. Even, if the petitioner had not completed 180 days in service, but her juniors have been retained and regularized, as such the respondent has violated the principles of "last come first go".

25. The respondent at the time of filing of reply had not taken the plea that the petitioner had not made herself available for work, but while leading evidence suggestion has been put to the petitioner that she did not made herself available for work, however no notice was issued to the petitioner for not turning up for work. A similar matter came for consideration before the Division Bench of Hon'ble High Court of HP, in case titled as **State of HP through principal secretary and anr. Versus Gatuk Zangmo in Civil Writ Petition No. 1271/2022,** wherein, the Hon'ble High Court of HP in **Civil Writ Petition No. 1271/2022**, has held that:

> **7. The learned Labour Court after going through the evidence on record has given finding of fact that the plea of the petitioners that they had disengaged the**

services of the respondent due to non availability of work could not be accepted, as RW-1 had admitted that some workers had been working throughout the year and their services had been regularized by the department. It had been admitted by RW-1 that junior workers had been retained for work and had voluntarily stated that they had been engaged on the recommendations of the villagers. Thus, it was established on record that the juniors to the respondent had been retained in service at the time of her termination and some fresh hands had also been employed without affording any opportunity of re employment to the respondent.

8. In the above factual background, the learned Labour Court after appreciating the evidence on record had rightly came to the conclusion that the termination of the services of the respondent was illegal and unjustified and the same was in violation of the provisions of Section 25-G and Section 25-H of the Act. The learned Labour Court has ordered the reinstatement of the respondent with continuity of service but has declined the relief of back wages to her.

9. Keeping in view the fact that the respondent had been in service under the petitioners from May, 2000, till March, 2017, the award passed by the learned Labour Court directing the reinstatement in service of the respondent is liable to be upheld. The services of the respondent had been terminated in violation of the provisions of Sections 25-F and 25-G of the Act.

10. In the facts and circumstances of the case, we are of the opinion that the impugned award does not call for any interference.

26. The state of HP, through principal secretary assailed the aforesaid judgment before Apex Court by way of filing **Special Leave Petition (Civil) Diary No.(s) 25887/2022, (arising out of impugned final judgment and order dated 08.03.2022 in CWP No. 1271/2022 passed by the Hon'ble High Court of Himachal Pradesh at Shimla,)** however, Hon'ble Apex Court has refused to interfere with the judgment passed by the Division Bench of Hon'ble High Court of HP and dismissed the special leave petition.

27. In view of my aforesaid discussion, it is clear that the frictional breaks as given to the petitioner was intentional just to defeat the provisions of Section 25-B and 25-F of the Act, as such the petitioner is held entitled to seniority and continuity from the date of her engagement. However, keeping in view the peculiar circumstances of the case, the petitioner is not entitled to any back-wages. Since the persons who had joined with her in the year 2016 and some of her juniors have been regularized by the department, she is also required to be considered for purpose of regularization by the department at the time when the juniors were regularized as per the policy governing daily wagers by the Government. Accordingly, issue no.1 is partly answered in affirmative.

Issue No. 2

28. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. ADA representing respondent department has contended that present claim

petition is not maintainable as the petitioner was engaged on rotation basis. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 3

29. In support of this issue no specific evidence has been led by the respondent department which could go to show that as to how the petitioner has no cause of action to file the present claim petition especially when the present claim petition has been filed by her pursuant to the reference sent by appropriate government to this Court for its legal adjudication. Therefore, this issue is decided in favour of the petitioner and against the respondent department.

Relief

30. As a sequittor, to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent department from the date of her initial engagement *i.e. w.e.f.* October, 2016 and that the breaks given by the respondent department being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby partly allowed and reference is accordingly answered partly in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent department with all consequential benefits i.e. seniority and continuity but without back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers framed by State Government and operative from time to time. The parties, however, shall bear their own costs.

31. The reference is answered in the aforesaid terms.

32. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File, after due completion be consigned to Record Room.

Announced in the open Court on this 28th Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	60 of 2023
Instituted on	:	03.05.2023
Decided on	:	28.07.2025

Champa Dolma w/o Shri Prakash Chand, r/o Village Lari, P.O. Tabo, Tehsil Spiti at Kaza, District Lahaul & Spiti, H.P. . . *Petitioner*.

Versus

The Executive Engineer, Jal Shakti Division Spiti at Kaza, District Lahaul & Spiti H.P.
. . *Respondent*.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate

For the Respondent : Shri Manoj Sharma, ADA

AWARD

The following reference was received for adjudication from the Appropriate Government adjudication:

"Whether the demand raised by the worker Smt. Champa Dolma w/o Shri Prakash Chand, r/o Village Lari, P.O. Tabo, Tehsil Spiti at Kaza, District Lahaul & Spiti, H.P before the Executive Engineer, Jal Shakti Division Spiti at Kaza, District Lahaul & Spiti H.P to condone the breaks period of the applicant w.e.f. 10/2016 to onwards in her continuity of service for all purposes including regularization and also pay the back-wages for the break period, is proper and justified? If yes, what relief and consequential service benefits the above aggrieved workman is entitled to from the above management? and if not, its effects?"

2. The case as emerges from the statement of claim is that the petitioner is the permanent resident of Village Lari, PO Tabo, Tehsil Spiti at Kaza, who had been engaged as daily waged beldar on muster roll basis w.e.f. October, 2016 and worked continuously under respondent. The department used to give artificial/frictional breaks in the daily waged services of the petitioner so that she could not complete the requisite days of working as required in the Tribal area. The department by adopting unfair labour practices had removed and thereafter re-engaged the services of the petitioner orally without issuing any notice in writing indicating the reasons for retrenchment/removal or without paying compensation under the provisions of Industrial Disputes Act (hereinafter to be referred as the Act). It is averred that the petitioner had worked continuously with the department and has completed 180 days in each calendar year of her service tenure, hence, her services were continuous for the purpose of Section 25-B of the Act. The workers who have worked together with the petitioner namely Chhewang Lamo, Narzin Dolma, Chhering Tenzing, Padmo Chodan, Thuktan Kalzang, Dolma Chhering, Dikit Yangzong etc., have been absorbed and engaged by the department but the services of the petitioner were not regularized. The petitioner requested the respondent not to give fictional breaks in her service, but of no avail. The juniors to the petitioner are still working with the department and they have been granted seniority and continuity but the same benefits were not granted to the petitioner. The intentional removal of the petitioner from time to time is in violation of Article 14 and 16 of Constitution of India as the workman was denied equality in the matter of employment. The petitioner has every right to do her job till the age of superannuation. It is prayed that the respondent department be directed to grant seniority and continuity from the date of her initial engagement with full back-wages along-with all consequential service benefits. It is further prayed that the services of the petitioner be ordered to be regularized as per the policy/notification of the State Government issued from time to time in this regard as she has completed more than 14 years of service with the respondent department.

3. Notice of this claim was sent to the respondent in pursuance thereof the respondent contested the claim by filing reply, wherein preliminary objections have been taken that the petitioner is still working subject to justification of work and availability of funds under JSW Sub Division Tabo, respondent department disengaged the services of the petitioner during extreme winter season every year as the region of Spiti Vally is a high altitude and snow bounded area, as such the development activities remain closed during winter season and the services of the petitioner are not required during winter season. The services of the petitioner were engaged on daily paid basis, as the casual labourers are required to be deployed by the department on various flow irrigation schemes. The services of the petitioner were never retrenched at any point of time by the respondent and the petition is bad for non-joinder of necessary parties. On merits, by reiterating the averments as made in the preliminary objections, the respondent claimed that the services of the petitioner were engaged during November, 2016 followed by succeeding years upto 2022 on seasonal basis and her services have been utilized on seasonal basis as per requirement at site of work subject to availability of funds. It is alleged that the services of the petitioner were terminated/disengaged by the respondent during extreme winter season every year as the region of Spiti Valley is a high altitude and snow bound area as such the development activities remained closed during winter, hence, the services of the petitioner are not required in the department during winter season. It is denied that fictional and artificial breaks were given to the petitioner to deprive her from seniority with 180 days in each calendar year. It is averred that the Government of India has introduced national Rural Employment Guarantee Act, which provides work to every eligible workman at least for 100 days in a year to earn his livelihood and prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder in which she denied preliminary objections raised by the respondent and also denied the averments as made in the reply and reaffirmed those as made in the statement of claim.

5. On the pleadings, this Court formulated the following issues on 16.09.2023.

1. Whether the demand raised by the petitioner before the respondent to condone the breaks period *w.e.f.* 10/2016 to onwards in her continuity of service for all purposes including regularization and also back wages for the break period, is proper and justified? If so, then what relief and consequential service benefits the petitioner is entitled to? . . *OPP*.

2. Whether the petition is neither competent nor maintainable as alleged? . . *OPR*.

3. Whether the petition is bad for non-joinder of necessary parties, as alleged?? . . *OPR*.

4. Relief

6. Thereafter, the parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes Entitled for seniority and continuity but without any back-wages

Issue No. 2 No

Issue No. 3 No

Relief Reference answered partly in affirmative per operative part of award

REASONS FOR FINDINGS

Issue No.1.

9. The onus to prove issue no.1 is on the petitioner and in order to substantiate her case, petitioner appeared into the witness box as PW-1 and tendered her affidavit (PW1/A) wherein she has reiterated almost all the averments as made in the claim petition. She also tendered into evidence copy of demand notice Ex.PW-1/B.

10. In cross-examination, she admitted that she had worked for some working days as other workers engaged with her. Self stated that the workers who had been engaged with her and even her juniors have been regularized by the department. She denied that she had not attended her duties in the year 2017. She admitted that the department had provided the work to her as per the availability. She denied that she had not made herself available for work. She admitted that she is still working with the department. Self stated that her juniors Dikit Yangzom, Thuktan Kalzang and Dolma Chhering were regularized by the department. She denied that she had not worked for 180 days in a calendar year. Self stated that the department used to give fictional breaks in her service. She denied that she used to remain absent at her own due to which she has not completed 180 days and after the verdict of Hon'ble Apex Court the present claim has been filed by her to gain undue advantages.

11. Shri Rakesh Kumar, Clerk of respondent has appeared into the witness box as PW-2 and placed on record the list of workers who were engaged in the year 2016 as Ex. PW-2/A, list of workers who are still working with the department since 2017 as Ex. PW-2/B and deposed that the workers who are mentioned in the lists Ex. PW-2/A and Ex. PW-2/B have been regularized.

12. During cross-examination, this witness has admitted that as per record the petitioner has not completed 180 days since 2016 to 2022.

13. This is the entire evidence which has been led by the petitioner.

14. In order to rebut the case of the petitioner, the respondent department has examined Shri Manoj Kumar, Executive Engineer as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chartRW-1/B and notification dated 05.10.2016 Ex. RW-1/C.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent in the year 2016 as beldar and she is continuously working with the department since 2016 till date. He admitted that the workers mentioned in list Ex. PW-2/B are shown to be working with the department since 2017 till date and some of the workers are show to be regularized by the department. He denied that the department had given fictional breaks in the service of the petitioner with intention not to regularize her services.

16. This is the entire evidence which has been led by the respondent.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has contended with vehemence that the services of the petitioner have been engaged by the respondent department on muster roll basis as daily waged beldar in the month of October, 2016 and since the date of her initial engagement, she was working with the respondent department but the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act, which is totally illegal and against the provisions of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department has also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time as she has completed about nine years of daily waged service with the respondent.

18. On the contrary, Shri Manoj Sharma, Ld. ADA has contended that the services of the petitioner have been engaged on rotation/seasonal basis and she is still working with the respondent department. He further contended that neither artificial breaks were given to the petitioner nor pick and choose method was adopted. The work was provided on the availability of work and funds and subject to weather condition of the Spiti Area. The petitioner had not completed 180 days in any of the calendar year and no junior to her was regularized by the department.

19. Coming to the case in hand, there is no denial to the fact that the petitioner was engaged by the respondent as a beldar on muster roll basis w.e.f. October, 2016. It is also proved on record especially with Ex. RW-1/B that she had worked 59 days in the year 2016, 57 days in the year 2017, 80 days in the year 2018, 75 days in the year 2019, 90 days in the year 2020, 164 days in the year 2021 and 151 days in the year 2022. The claim of the petitioner is that the frictional breaks were deliberately given by the respondent so she could not complete 180 days in a calendar year. The stand of the respondent on the other hand is that the services of the petitioner were disengaged during extreme winter season every year as the region of Spiti Valley is a high altitude and snow bound area. The development activities remain closed during winter season, as such, the services of the petitioner were not required during winter season and she was disengaged due to this reason. No frictional and artificial breaks have not been given to the petitioner. The respondent has claimed that the services of the petitioner have been utilized on seasonal basis as per the requirement every year subject to availability of work and funds and petitioner never raised any objection in this regard.

20. Coming to the evidence led by the parties, RW-1 during his cross-examination has admitted that the workers mentioned in list Ex. PW-1/D are working with the department since 2017 till date and some of the workers have been regularized by the respondent department. The document Ex. PW-2/A established on record that the Dikit Yangzom, Dolma Chhering and Thuktan Kalzang were also engaged in the year 2016 and their services have been regularized. Similarly, vide Ex. PW-2/B, seventeen workers are shown to have been engaged in the year 2017 onward and most of the workers are still working with the department. If no work was available for the petitioner, there is no justification for the respondent department to allot the work to Dikit Yangzom, Dolma Chhering and Thuktan Kalzang and regularize their services. The persons mentioned in Ex. PW-2/B are still working with the respondent department since, 2017. It clearly

shows that the respondent have given intentionally frictional breaks to the petitioner so that she may not complete 180 days to get benefits of Section 25-B of the Act.

21. From the mandays chart Ex. RW-1/B, it is more than clear that the petitioner is continuously working with the respondent department since 2016 and the respondent department used to give fictional breaks in her service in order to defeat the provisions of section 25-B and 25-F of the Act, which cannot be legalized in any manner. It is not the claim of the respondent that petitioner herself abandoned the job whereas the petitioner has claimed that she was available for the work, but respondent department used to give frictional breaks to her so that she may not complete 180 days in a calendar year. The respondent department has continuously taken work from the petitioner since 2016 to 2020. The State Government vide letter dated 05.10.2016 Ex. RW-1/C has given, directions to provide muster roll to all labourers in the area of Pooh in Kinnaur and Division Kaza in Lahual & Spiti for full month muster roll basis in place of breaks, if sufficient work and funds are available for these persons in that particular areas. The petitioner was working with the respondent department since, 2016 but the respondent department has not complied with the terms of letter Ex. RW-1/C, nor there is any evidence led by the respondent that no funds were available as such the work could not offered to the petitioner for 30 days in a month. Thus, the breaks given in her service by the respondent were definitely frictional breaks. Other workers engaged with the petitioner in the year 2016 or thereafter are continuously working with the department and some of the workers were regularized but the services of the petitioner were not regularized at par with the similar situated persons. Since, it has been proved on record that the petitioner was engaged in the month of October, 2016 by the respondent department, her services ought to have been regularized before her junior were regularized, which would show that other persons, who had joined along-with her or later on have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. The petitioner being in employment with the respondent since, 2016 was given artificial/ frictional breaks which fact has been established on record, as such she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form the date of her initial joining.

22. Besides, the petitioner could not have been discriminated arbitrarily between similarly situated persons. The petitioner has alleged violation of Section 25-G of the Act and she has deposed that her juniors have been retained, whereas her services were terminated in gross violation of Section 25-G of the Act, which reads as under:

> "***25-G. Procedure for retrenchment***.—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

23. To invoke this provision, the workman is not required to prove that she had worked for 240 days preceding to the date of her termination but it is sufficient for her to plead and prove that while terminating her services, the employer violated the rules of "last come first go". In case **reported in latest HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhatag Ram & Anr. , The Hon'ble High Court has observed** that:- ***"It was not necessary for the workmen to complete***

240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act."

24. With, Ex. PW-2/A it stand establish on record that Dikit Yangzom, Dolma Cheering and Thuktan Kalzang were also initially engaged in the year 2016 and their services have been regularized, whereas Ex. PW-2/B shows that seventeen persons were engaged in the year 2017 and they are still working with the department. It is evident from the statement of RW-1 that the persons shown in Ex. PW-2/B (wrongly mentioned as PW-1/D) are shown to be working with the department and some of the workers are shown to be regularized. It is clearly establish on record that the provisions of Section 25-G of the Act were violated. Even, if the petitioner had not completed 180 days in service, but her juniors have been retained and regularized, as such the respondent has violated the principles of "last come first go".

25. The respondent at the time of filing of reply had not taken the plea that the petitioner had not made herself available for work, but while leading evidence suggestion has been put to the petitioner that she did not made herself available for work, however no notice was issued to the petitioner for not turning up for work. A similar matter came for consideration before the Division Bench of Hon'ble High Court of HP, in case titled as **State of HP through principal secretary and anr. Versus Gatuk Zangmo in Civil Writ Petition No. 1271/2022,** wherein, the Hon'ble High Court of HP in **Civil Writ Petition No. 1271/2022**, has held that:

7. The learned Labour Court after going through the evidence on record has given finding of fact that the plea of the petitioners that they had disengaged the services of the respondent due to non availability of work could not be accepted, as RW-1 had admitted that some workers had been working throughout the year and their services had been regularized by the department. It had been admitted by RW-1 that junior workers had been retained for work and had voluntarily stated that they had been engaged on the recommendations of the villagers. Thus, it was established on record that the juniors to the respondent had been retained in service at the time of her termination and some fresh hands had also been employed without affording any opportunity of re employment to the respondent.

8. In the above factual background, the learned Labour Court after appreciating the evidence on record had rightly came to the conclusion that the termination of the services of the respondent was illegal and unjustified and the same was in violation of the provisions of Section 25-G and Section 25-H of the Act. The learned Labour Court has ordered the reinstatement of the respondent with continuity of service but has declined the relief of back wages to her.

9. Keeping in view the fact that the respondent had been in service under the petitioners from May, 2000, till March, 2017, the award passed by the learned Labour Court directing the reinstatement in service of the respondent is liable to be upheld. The services of the respondent had been terminated in violation of the provisions of Sections 25-F and 25-G of the Act.

10. In the facts and circumstances of the case, we are of the opinion that the impugned award does not call for any interference.

26. The state of HP, through principal secretary assailed the aforesaid judgment before Apex Court by way of filing **Special Leave Petition (Civil) Diary No.(s) 25887/2022, (arising out of impugned final judgment and order dated 08.03.2022 in CWP No. 1271/2022 passed by the Hon'ble High Court of Himachal Pradesh at Shimla,)** however, Hon'ble Apex Court has refused to interfere with the judgment passed by the Division Bench of Hon'ble High Court of HP and dismissed the special leave petition.

27. In view of my aforesaid discussion, it is clear that the frictional breaks as given to the petitioner was intentional just to defeat the provisions of Section 25-B and 25-F of the Act, as such the petitioner is held entitled to seniority and continuity from the date of her engagement. However, keeping in view the peculiar circumstances of the case, the petitioner is not entitled to any back-wages. Since the persons who had joined with her in the year 2016 and some of her juniors have been regularized by the department, she is also required to be considered for purpose of regularization by the department at the time when the juniors were regularized as per the policy governing daily wagers by the Government. Accordingly, issue no.1 is partly answered in affirmative.

Issue No. 2

28**.** On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. ADA representing respondent department has contended that present claim petition is not maintainable as the petitioner was engaged on rotation basis. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 3

29. In support of this issue no specific evidence has been led by the respondent department which could go to show that as to how the petitioner has no cause of action to file the present claim petition especially when the present claim petition has been filed by her pursuant to the reference sent by appropriate government to this Court for its legal adjudication. Therefore, this issue is decided in favour of the petitioner and against the respondent department.

Relief

30. As a sequittor, to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent department from the date of her initial engagement *i.e w.e.f.* October, 2016 and that the breaks given by the respondent department being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby partly allowed and reference is accordingly answered partly in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent department with all consequential benefits i.e. seniority and continuity but without back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers framed by State Government and operative from time to time. The parties, however, shall bear their own costs.

31. The reference is answered in the aforesaid terms.

32. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File, after due completion be consigned to Record Room.

Announced in the open Court on this 28th Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla (H.P.).

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 180 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Harish Sharma s/o Dev Dutt Sharma through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with

Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with

Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions

during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 23.04.2004 and he was working as Assistant Accountant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 44,369/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from

service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Harish Sharma, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 23.04.2004 and was last working as Assistant Accountant, drawing a salary of Rs. 44,369/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted

by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No.4.

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Harish Sharma stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He expressed his ignorance that all the Doctor's working with the respondent(s) were relieved from the duty in the month of May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G and admission list session 2019-2020 Ex. RW-1/H. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in

number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the

workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 3,62,952/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Sub section(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Sub section is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein

that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but

since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:
"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs-of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 181 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Guru Ram s/o Late Shri Kimat Ram through J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with

Shri J.C Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with

Sh. Ganesh Barowalia, Advocate

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to

discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 11.05.2000 and he was working as Daftri. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 28,483/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Guru Ram, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no

relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 11.05.2000 and was last working as Daftri, drawing a salary of Rs. 28,483/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4.

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Guru Ram stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary

of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He admitted that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of

natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have

completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,27,864/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the

category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of

Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

App. no. 182 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Raj Rani w/o Sh. Satpal, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 21.08.2001 and she was working as Sweeper. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 27,749/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen,

who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Raj Rani, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-

teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 21.08.2001 and was last working as Sweeper, drawing a salary of Rs. 27,749/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4.

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Tara Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-

1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to

administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e. State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a

Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,21,992/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or

punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination

of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95**, however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 183 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Deepak Kumar s/o Glori Ram Sharma through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 06.01.2004 and he was working as Lab Attendant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 31,696/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their

demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Deepak Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 06.01.2004 and was last working as Lab. Attendant, drawing a salary of Rs. 31,696/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated

that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Redundant

Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4.

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Deepak Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter

was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the

pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,53,568/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has

been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Sub-section(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments,

the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:
"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95**, however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 184 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Deep Chand s/o Sadhu Ram Sharma through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the

respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 20.07.2000 and he was working as Lab Assistant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 35,364/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the

complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Deep Chand, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 20.07.2000 and was last working as Lab. Assistant, drawing a salary of Rs. 35,364/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has

been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no.2	:	Redundant
Issue No.3	:	Redundant
Issue No.4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4.

8. Issue no. 4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Deep Chand stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in

number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government *i.e.* State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the

workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,82,912/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be

construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 185 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Neera w/o Sh. Vidya Dutt, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, HP. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 18.05.1999 and she was working as Lab Assistant. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an

arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Neera, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA

and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 18.05.1999 and was last working as Lab Assistant, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Neera stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this

Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the

workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next

question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the

retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must**

fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 186 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Sunita Devi w/o Lt. Sh. Nanak Chand, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant.*

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.08.2003 and she was working as Sweeper. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 20,541/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the

management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Sunita Devi, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the

union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.03.2003 and was last working as Sweeper, drawing a salary of Rs. 20,541/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Sunita Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the

petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 1,64,328/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which

the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or

of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-**

Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 187 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Balvinder Kumar s/o Late Shri Tarsem Lal through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with

Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with

Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.01.1999 and he was working as Safai Karamchari. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 30,001/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the

competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Balvinder Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.01.1999 and was last working as Safai karamchari, drawing a salary of Rs. 30,001/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as

the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Redundant

Issue no.2 : Redundant

Issue No.3 : Redundant

Issue No.4 : Yes

Relief : Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Balvinder Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He admitted that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was

issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section

33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable

to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,40,008/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the

workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and**

Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 188 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Gulab Singh s/o Late Shri Ram Kishan through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents.*

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the

MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 08.03.1999 and he was working as Lab Assistant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 35,186/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the

matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Gulab Singh, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 08.03.1999 and was last working as Lab. Assistant, drawing a salary of Rs. 35,186/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Gulab Singh stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this

Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have

completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,81,488/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such closure shall, subject to the provisions of sub-sectio (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High

Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the

order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India**

Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95 , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

App. no. 189 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Tara Devi w/o Sh. Lal Singh, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 26.02.2002 and she was working as Sweeper. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 27,066/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management

also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Tara Devi, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 26.02.2002 and was last working as Sweeper, drawing a salary

of Rs. 27,066/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s).*

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Tara Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She admitted that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session

2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the

respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e. State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of

service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,16,528/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents

has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders

applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it,

however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 190 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Mohan Singh Late s/o Mast Ram through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions

during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 18.05.1999 and he was working as Conductor. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 32,582/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman

could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Mohan Singh, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 18.05.1999 and was last working as Conductor, drawing a salary of Rs. 32,582/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the

sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? *.OPR(s).*

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Mohan Singh stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, deposed that he was working as a bus-conductor and the respondent stopped plying the bus three-four months prior to his termination. He further denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/

terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the

Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,60,656/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of

superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is

dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be

deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether

the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 191 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Naresh Kumar s/o Shri Devi Chand through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 06.11.2001 and he was working as Carpenter. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and

illegal manner. It is claimed that the complainant was drawing Rs. 27,749/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Naresh Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of

undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 06.11.2001 and was last working as Carpenter, drawing a salary of Rs. 27,749/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

ISSUE NO.4.

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Naresh Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary

of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of

natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the

workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,21,992/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High

Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the

order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India**

Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95 , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 192 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Kamal Kishore Chuhan s/o Lt. Sh. Keshav Dutt through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.01.2007 and he was working as Lab. Attendant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 20,541/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed

unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Kamal Kishore Chuhan, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.01.2007 and was last working as Lab Attendant, drawing a

salary of Rs. 20,541/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s).*

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Pawan Kumar Khatri stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he used to go for Dental Camp outside the hospital and the camps were regularly held outside the hospital till he was working with the respondent. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session

2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the

working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 1,64,328/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the

management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such

standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Sub-section(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman

and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby

dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 193 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Anil Kumar S/o Shri Raj Kishan through J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant.*

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated

01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 26.07.1999 and he was working as Clerk. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without

seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Anil Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 26.07.1999 and was last working as Clerk, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At

present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s).*

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Anil Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, deposed that he used to sit in the OPD and every day, he was entertaining 30 to 40 patients. He denied that there was no OPD counter in the college. He further denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the

government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by

MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of

superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is

dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be

deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether

the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 194 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Pawan Kumar Khatri s/o Lt. Sh. Dil Bahadur through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh.Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 25.05.1999 and he was working as Lab. Assistant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and

illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Pawan Kumar Khatri, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of

undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 25.05.1999 and was last working as Lab Assistant, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petitioner does not fall under the definition of workman, as alleged? *OPR(s).*

4. Whether the application is not maintainable as alleged? *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Pawan Kumar Khatri stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he is the General Secretary of the workers union and last return was filed by the union in the month of March, 2024. He denied that there was

a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He expressed ignorance that all the Doctors working with the respondent(s) were relieved from duty in the month of May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of

natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in

violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers,

residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, *vide* letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to (a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High

Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section (1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Sub-section (2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section (2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section (2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the

order of retrenchment, their remedy was not under Section 33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 195 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Uma Devi w/o Sh. Bajiru Ram, Through J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, HP. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.02.2003 and she was working as Sweeper. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 25,600/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents

management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Uma Devi, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was

reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.02.2003 and was last working as Sweeper, drawing a salary of Rs. 25,600/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Tara Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she stated that she was doing cleaning work in the hostel. She denied that the student had left the hostel after completion of their academic year in the month of April, 2024. She denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the

respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e. State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,04,800/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have

claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to (a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section (1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute,

alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Sub-section (2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section (2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the

workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section (2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section 33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the

humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 196 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Hemlata w/o Sh. Chaman Lal, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.08.2003 and she was working as Sweeper. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 25,600/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the

workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Hemlata, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.08.2023 and was last working as Sweeper, drawing a salary of Rs. 25,600/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining

them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Tara Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she stated that she was doing cleaning work in Lab till 2017, thereafter she was asked to do work in the office as a Peon. She denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e. State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,04,800/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein

that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but

since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 197 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Pumesh Mehta s/o Shri Madan Lal Mehta through J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 14.09.2004 and he was working as Lab Attendant. Complainant worked with the respondent since his appointment and remained in

continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 20,541/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Pumesh Mehta, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA

and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 14.09.2004 and was last working as Lab. Attendant, drawing a salary of Rs. 20,541/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no.2	:	Redundant
Issue No.3	:	Redundant
Issue No.4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Pumesh Mehta stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary

of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of

natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have

completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 1,64,328/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High

Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the

order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India**

Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95 , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**.

App. no. 198 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Jai Kumar s/o Shri Mohinder Singh through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 22.05.1999 and he was working as Lab. Assistant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were

held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Jai Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 22.05.1999 and was last working as Lab. Assistant, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so

called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Jai Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024

Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has

been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions

of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents

has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders

applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it,

however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:
"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however,

it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 199 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Pradeep Kumar Late s/o Shri Shyampal Singh through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated

01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.01.1999 and he was working as Lab Assistant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 37,185/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without

seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Pradeep Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.01.1999 and was last working as Lab. Assistant, drawing a salary of Rs. 37,185/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At

present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue no. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Pradeep Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, deposed that he is the President of the workers union. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He expressed his ignorance that all the Doctor's working with the respondent(s) were relieved from the duty in the month of May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/

terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the

Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,97,480/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of

superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is

dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be

deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor

dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 200 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Hardev Kumar s/o Shri Rattan Chand through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 11005 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, PO Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 12.07.2002 and he was working as Lab. Attendant. Complainant worked with the respondent since his appointment and remained in

continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 33,921/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Hardev Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA

and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 12.07.2002 and was last working as Lab. Attendant, drawing a salary of ` 33,921/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s).*

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Hardev Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he deposed that when his services were terminated, he was working as a Library Attendant. He denied that the respondent management had closed down the

library in the month of May, 2024. He further denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this

Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in

violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the

reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,71,368/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of

section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun**

Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the

order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd. Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India**

Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95 , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 201 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Rakesh Kumar s/o Sh. Gagha Ram through J.C Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 26.07.1999 and he was working as Chowkidar. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 30,001/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due

leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Rakesh Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 26.07.1999 and was last working as Chowkidar, drawing a salary of Rs. 30001/- per month at the time of closure of respondents institution. All the allegations

of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief:

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Rakesh Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he was deputed as security guard on the main gate. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were his earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He admitted that Doctors were not coming in the respondent's college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the

petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,40,008/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which

the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or

of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section 33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd. Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no. 4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 202 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Mallah Singh s/o Sh. Shabo Ram, through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 17.02.2003 and he was working as Lab Attendant. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 31,696/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was

never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Mallah Singh, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 17.02.2003 and was last working as Lab Attendant, drawing a salary of Rs. 31,969/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond

the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Redundant

Issue No. 2 : Redundant

Issue No. 3 : Redundant

Issue No. 4 : Yes

Relief : Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Vijay Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he was working as a lab attendant with the respondents. He further stated that he was working in oral pathology department. He denied that no students visited pathology department in the year, 2024. He further denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were his earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that Doctors were not coming in the respondent's college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any

permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,53,568/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment

was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in

M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd. Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:
"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

App. no. 203 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Vijay Kumar s/o Late Sh. Babu Lal, through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 25.11.2003 and he was working as Safai Karamchari. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 25,600/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act

before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Vijay Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 25.11.2003 and was last working as Safai Karamchari, drawing a salary of Rs. 25,600/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The

allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Vijay Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he was working as a Safai Karamchari with the respondents. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were his earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that Doctors were not coming in the respondent's college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this

regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of H.P. Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the

Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,04,800/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the

contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be

construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd. Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 204 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Pawan Kumar s/o Sh. Bahadur Singh, through J.C. Bhardwaj, President H.P. AITUC HQ. D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 07.03.1999 and he was working as Lab Assistant. Complainant worked with the respondent since his appointment and remained in

continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Pawan Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA

and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 07.03.1999 and was last working as Lab Assistant, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Pawan Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he stated that he was working as a lab attendant in the Bio Chemistry Department earlier and thereafter he was shifted to General Surgery two years back, when the respondents stopped taking admission for fresh batches his services were shifted from bio chemistry department to general surgery. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were his earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that Doctors were not coming in the respondent's college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is

situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act.

He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the

complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the

retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether

in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section 33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the application under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd. Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd. Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 205 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Kiran Jaswal w/o Sh. Prakash Jaswal, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 01.03.1999 and she was working as Lab Assistant. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 36,173/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from

this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Kiran Jaswal, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits,

respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 01.03.1999 and was last working as Lab Assistant, drawing a salary of Rs. 36,173/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged**?** . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s).*

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Redundant
Issue No. 2	:	Redundant
Issue No. 3	:	Redundant
Issue No. 4	:	Yes
Relief	:	Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Tara Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the

respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e. State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,89,384/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have

claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or

punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:—

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination

of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd. Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd. Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 206 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Beena Devi w/o Sh. Rakesh Kumar, Through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal.

. . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along with Sh. J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Shri Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/ workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 16.02.1999 and she was working as Peon. Complainant worked with the respondent since her appointment and remained in continuous employment of the respondents till her illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 29,951/- per month at the time of her removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/ management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass her and to pressurize her to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started with holding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant

workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/ workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of her legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Ms. Beena Devi, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the state or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 16.02.1999 and was last working as Peon, drawing a salary of Rs. 29,951/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents

College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? .. *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj, AR and Atul Bhardwaj, AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Redundant

Issue No. 2 : Redundant

Issue No. 3 : Redundant

Issue No. 4 : Yes

Relief : Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8 Issue no. 4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of her case, complainant Ms. Beena Devi stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. She also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, she denied that there was a considerable decline in the foot fall of the students in the respondents college. She admitted that the respondents have credited salary of four months in her account. Self stated that these were her earned wages which were released in her favour. She admitted that she has not returned four months' salary to respondents. She stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. She denied that Doctors were not coming in the respondent's college after May, 2024. She denied that reference no. 07/2024 is not related to the present complaint. She denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner.

He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that she is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant herself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that she was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 0f 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,39,608/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant herself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when her services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment

was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the complainant was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the

complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. no. 207 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Bhim Singh s/o Shri Kania Ram through J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, HP. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C. Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 06.11.2001 and he was working as Carpenter. Complainant worked with the respondent since his appointment and remained in continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 27,749/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned

removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Bhim Singh, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 06.11.2001 and was last working as Carpenter, drawing a salary of Rs. 27,749/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have

complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief:

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Redundant

Issue No. 2 : Redundant

Issue No. 3 : Redundant

Issue No. 4 : Yes

Relief : Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no.4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Naresh Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2024 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, he denied that there was a considerable decline in the foot fall of the students in the respondents college. He admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He denied that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in

number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the

workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,21,992/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of

superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is

dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the

words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched) as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether

the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

> "**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".**

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No. 1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issues no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF ANUJA SOOD, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. no. 208 of 2024

Instituted on 03.09.2024

Decided on 31.07.2025

Narender Kumar s/o Jagan Nath Sharma through J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, Near District Courts, Solan, H.P. . . *Complainant*.

Versus

1. DAV College Managing Committee, Chitragupta Road, New Delhi, 110055 through its General Secretary.

2. MNDAV Dental College and Hospital Tatul, P.O. Oachghat, District Solan, H.P. through its Principal. . . *Respondents*.

Complaint under Section 33-A of the Industrial Disputes Act, 1947

For applicant : Shri Atul Bhardwaj, AR along-with Shri J.C Bhardwaj, AR.

For non-applicants : Shri Rajiv Kataria, Advocate with Sh. Ganesh Barowalia, Advocate.

ORDER

This order shall dispose off an application preferred under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) against the change of service conditions during the pendency of reference case no. 07/2024 and for setting aside the removal order dated 01.08.2024 with further prayer of restoration of services of the complainant workman at the respondent institution with incidental service benefits including full back-wages and costs throughout from the date of illegal removal order dated 01.08.2024.

2. The material facts necessary for the disposal of the present complaint are that the appropriate government of Himachal Pradesh had referred the industrial dispute raised by the MNDAV Dental College employees and workers union, registered under Section 2-K of the Act which is pending as reference no. 07/2024 for adjudication before this Court/Tribunal. The complainant/workman is an active member of the above union and beneficiary of the demands contained in the reference case no. 07/2024. The said union is registered under the provisions of Indian Trade Unions Act, 1926, as such the union is sole representative of workers employed with the institution of respondents and being an active member of the union, the complainant is bound to discharge the duties as provided under the Act and Trade Union Act, 1926. It is averred in the complaint that the complainant joined the respondent institution on 26.07.1999 and he was working as Chowkidar. Complainant worked with the respondent since his appointment and remained in

continuous employment of the respondents till his illegal removal on 01.08.2024 in an arbitrary and illegal manner. It is claimed that the complainant was drawing Rs. 29,242/- per month at the time of his removal from service. The services of the complainant had been removed during the pendency of the aforesaid reference case. The removal order has been passed by the respondents without seeking any permission from this Tribunal under Section 33(1) (a) & (b) of the Act, thus the action of the respondents management is illegal, null and against the mandatory provisions of the Act. It is alleged by the complainant that the respondents/management has changed the service conditions of the complainant during the pendency of reference case no. 07/2024 with intention to harass him and to pressurize him to withdraw reference no. 07/2024 from this Tribunal. The removal order dated 01.08.2024 is a result of unfair labour practice adopted by the respondents management during the pendency of the reference. After submission of demand notice dated 27.05.2022, the management resorted to unfair labour practices to harass the workmen. The respondents management started withholding the earned wages/salaries for months together of those workmen, who were members of the workers union and to aggravate their misery the management abstained from participating in the conciliation proceedings to demoralize their impetus. The management also imposed unwarranted restrictions on the workmen as their due leaves were not sanctioned and they were held like captives in the college campus for no reason at all. The demand notice dated 27.05.2022 was referred by the appropriate government to this Tribunal for adjudication after having kept the matter in abeyance at the conciliation for almost two years. The respondents management instead of negotiating with the union on the demand charter, started victimizing the workers by coercing and pressurizing them to either withdrew or settle their demand notice dated 27.5.2022 as per the management's whimsical terms and conditions, however, the union did not agree to withdraw their demands or to settle the same as per the whimsical desires of the management. The complainant workman was illegally removed from service during the pendency of reference case no. 07/2024. The letter of removal was not even signed by the competent authority as the General Secretary was never the competent authority to remove the workman from respondent institution. The General Secretary of respondents management was not an appointing authority of the complainant. The complainant was appointed by Principal/Director of the respondents College and he was the only competent person to remove the workman from service. The service conditions of the workman could not have been changed during the pendency of reference no. 07/2024 and any change without seeking permission under Section 33-1 (a) & (b) of the Act, from this Court and the removal of the complainant/workman on 01.08.2024 is totally illegal, null & void. The respondent management was under statutory obligation to compensate the complainant workman as per the mandate of Section 25-FFF read-with Section 25F of the Act before or at the time of issuing impugned removal order dated 01.08.2024, but the respondent management in utter disregard to the law of land particularly labour laws have violated this provisions and wronged the complainant in the matter of his legal rights as no compensation in accordance with the aforesaid provisions has been granted to complainant. The complaint is duly verified by Shri Narender Kumar, complainant.

3. Notice(s) of this complaint have sent to the respondents and in pursuance thereof the respondents filed a joint reply to the complaint, whereby they took preliminary objection of maintainability and the complainant does not fall under the definition of "workman", there is no relevancy of Reference no. 7/2024 with the present complaint and after closure of the employers the demands of the employees do not survive and they are only entitle to compensation. It was claimed that the respondents have complied with the statutory provisions of Sections 25-F, 25-FFA

and 25-FFF of the Act, which governs the conditions related to retrenchment and closure of undertaking. It was averred that as per Section 25-FFA, no advance notice is required nor permission from the sate or any authority is necessary when an undertaking employs less than fifty workers on an average over the preceding twelve months. As the employees employed by the respondent were less than fifty, the respondents falls within this criterion as such they are exempted from the requirement of providing advance notice of closure. The respondents duly adhered to the provisions of Section 25-FFA and have paid three month's salary to each eligible employee as compensation. The respondents have acted in accordance with the mandate of the Act. On merits, respondents denied that the complainant is an active member of the union and beneficiary of demands contained in the reference no. 07/2024. It is averred that as per Section 10 of the Act, the union is not a competent entity to prefer this reference before the Industrial Tribunal. It was reiterated that since the MNDAV Dental College has been closed, the union representing the non-teaching employees in now effectively non-existent. It was admitted that the complainant had joined the respondents institution on 26.07.1999 and was last working as Chowkidar, drawing a salary of Rs. 29,424/- per month at the time of closure of respondents institution. All the allegations of unfair labour practices were denied by the respondents. The complainant along-with other so called union members of the MNDAV Dental College initiated protests and Dharnas on the college premises upon which the respondents filed an injunction suit against those employees and in the said suit an ad-interim injunction orders were issued against the union and its members restraining them from making any protests or Dharnas inside the College premises but during the pendency of injunction suit, the members of union disobeyed the ad-interim injunction orders and accordingly the contempt petition was filed which is being contested by the members of union. It was reiterated that the complainant and other workers were discharged from service due to closure of respondents College based on unavoidable circumstances beyond the control of management as the college faced a significant shortage of new admissions and a decline in dental patients, which were beyond the control of the respondents. The respondents College at Solan had total of sixty sanctioned seats for BDS course, but actual admission ranged between thirty five to forty students, which failed to meet the sanctioned capacity. In the inspection report dated 24.04.2023 conducted by the Dental Council of India, it was clearly observed that a lower patient footfall in comparison to the sanctioned BDS seats, directly affected the clinical training opportunities available to students. At present no BDS students are left in Dental College of respondents at Solan as migration process has been completed. The college has closed the hospital and Teaching Blocks as well as the hostel, however, the principal remains available to assist former students with administrative matters. The allegations regarding removal order dated 01.08.2024 were denied and claimed that they have complied with all legal requirements under the labour laws and prayed for the dismissal of the complaint by upholding the removal order dated 01.08.2024. Reply is duly supported with an affidavit of Dr. Garish Kumar, Officiating Principal of MN DAV Dental College at Solan.

4. Rejoinder was filed in which the averments made in the reply were denied and those in the complaint were re-affirmed.

5. On the pleadings, this Court formulated the following issues on 27.05.2025:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing the removal order dated 01.08.2024 during the pendency of

the reference no. 07/24 in violation of the provisions of Section 33(1) of the Industrial Disputes Act, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . *OPP*.

3. Whether the petitioner does not fall under the definition of workman, as alleged? . . *OPR(s)*.

4. Whether the application is not maintainable as alleged? . . *OPR(s)*.

5. Relief

6. I have heard S/Shri J.C. Bhardwaj and Atul Bhardwaj AR for the complainant as well as Shri Rajiv Kataria, Ld. Counsel for the respondents and also perused the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Redundant

Issue No. 2 : Redundant

Issue No. 3 : Redundant

Issue No. 4 : Yes

Relief : Complaint is dismissed being not maintainable per operative part of order.

REASONS FOR FINDINGS

Issue No. 4

8. Issue no. 4 is taken up for determination at first as the same is most contentious issue between the parties.

9. In support of his case, complainant Shri Narender Kumar stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, which is just a reproduction of the averments as made in the complaint. He also tendered in evidence demand notice Ex. PW-1/B, reference Ex. PW-1/C, removal order Ex. PW-1/D, settlement dated 05.04.2004 Mark PX and settlement dated 09.02.2012 Ex. PW-1/E.

10. During cross-examination, deposed that he was deputed as a Security Guard on the main gate and he used to enter the name of patient in his register as well as vehicles. He denied that there was a considerable decline in the foot fall of the students in the respondents college. He

admitted that the respondents have credited salary of four months in his account. Self stated that these were earned wages which were released in his favour. He admitted that he has not returned four months' salary to respondents. He stated that the management had pressurized the employees of the union to accept the terms of settlement and to accept the settlement as per their desire. He admited that the Doctors were not coming in the respondent college after May, 2024. He denied that reference no. 07/2024 is not related to the present complaint. He denied that the complaint has been filed with the malafide intention to extract money from the respondents.

11. This is the entire evidence led by the complainant.

12. In order to rebut the case of the complainant, respondents examined Dr. Garish Kumar, Principal of respondents College as RW-1, who also tendered in evidence his affidavit Ex. RW-1/A, which is just a reproduction of the averments as made in the reply. He also tendered in evidence letter dated 05.08.2024 reference no. 8058080583 Ex. RW-1/B, letter dated 05.08.2024 reference no. 8057580579 Ex. RW-1/C, letter dated 31.10.2023 Ex. RW-1/D, admission list session 2016-2017 Ex. RW-1/E, admission list session 2017-2018 Ex. RW-1/F, admission list session 2018-2019 Ex. RW-1/G, admission list session 2019-2020 Ex. RW-1/H and letter dated 27.03.2024 Ex. RW-1/J. He also tender in evidence letter dated 24.04.2023 Mark-R-1, personal hearing dated 22.08.2023 mark-R-2 and letter dated 06.09.2023 mark-R-3.

13. During cross-examination, he stated that he does not remember that the worker union had raised demand notice Ex. PW-1/B and he had not agreed for the conciliation, as such the matter was referred to this Court as reference number 07/2024. He admitted that he had not taken any permission from the Court before terminating/ removal of the services of the workman/ petitioner. He could not state that who is signatory to the removal letter Ex. PW-1/D. Self stated that it was signed by General Secretary. He denied that at the time when the removal letter Ex. PW-1/D was issued, more than 60 workers were working with the respondents. He further stated that he does not know whether mandatory notice of two months prior to removal of workmen was issued to the government or to the workers. He admitted that letter dated 05.08.2024 Ex. RW-1/C was sent to the government by the respondents and it is written in Ex. RW-1/C that no case was pending in this regard in any Court. He had not obtained any NOC from the Labour Department before removing/ terminating services of the petitioner, but explained that since the employees were less than 50 in number as such no permission was obtained from Labour Department or Court. He denied that the respondent has misled the labour department and has also not paid legally admissible dues to the workers. He admitted that the gratuity has not been paid to the petitioner as well as to the other workers till date. He denied that the respondents have violated the mandatory provisions of Section 25-F. He stated that efforts were made by the respondents to increase the footfall of the students. He denied that considerable number of patients were regularly visiting the respondent college for treatment. He admitted that he has not produced any OPD Register. Self stated that the report of Dental Counsel of India mark-R1 has been produced on record. He denied that Mark-R1 is fake and forged document and that the Dental Counsel of India had pointed out that they were not giving quality education due to lack of staff and other facilities. He denied that the respondent college is situated at a place which has emerged as Student and Education Hub. He further denied that the respondents have breached the settlement arrived between the respondent management and the workers. He also denied that after terminating/ removing the services of the petitioner and other workers, respondent wants to restart the college. He stated that the interim order issued by this Court has not been implemented. He denied that the respondents have violated the principles of

natural justice as well as mandatory provision of law while terminating/ removing the services of the petitioner and other workers.

14. Sh. Sansar Chand, Administrative officer, had appeared into the witness box as RW-2, who also tendered in evidence his affidavit Ex. RW-2/A, which is almost a reproduction of the averments as made in the reply.

15. During cross-examination, he deposed that no permission was sought from this Court before issuing removal letter Ex. PW-1/D. He admitted that Ex. RW-1/C was send by the respondents to the Secretary of HP Government. He deposed that all the admissible dues have been paid to the petitioner and other workers at the time of removal. He admitted that gratuity to the petitioner as well as to the workers has not been paid till date. He stated that they have made compliance to Section 25-F of the Act. He denied that closure has been declared due to administrative and managerial failure. He admitted that respondent management had received a letter from Dental Council of India to the effect that they were not giving quality education to the students. He deposed that the efforts were made by the respondent management to improve the working atmosphere in the College. He denied that a concocted story has been built by the respondents to justify the closure of the respondents college. He denied that no machinery etc. has been shifted from the respondent college to Dental College Yamuna Nagar. He further denied that fake record of admission of students has been produced in the Court. He admitted that the petitioner and other workers were appointed by the principal of respondent college.

16. This is the entire evidence which has been led by the respondents.

17. The Ld. Counsel for the respondents argued that the complaint is not maintainable in the light of facts of present complaint as the action of the respondents which has been assailed in terms of complaint filed under Section 33-A of the Act is not governed by the provisions of Section 33-A of the Act. He further argued that the complaint has been filed by the complainant/worker on the grounds that he is the employee of MNDAV Dental College, Oachghat, District Solan and Appropriate Government i.e State of Himachal Pradesh has referred the industrial dispute raised by MNDAV Dental employees and Workers Union registered with AITUC under Section 2-k of the Act, which is pending as a reference no. 7 of 2024 for adjudication before this Court whereby the workers have claimed that they are the active members of Union and during the pendency of this reference, the respondents management has removed the workers from their services on 01.08.2024 as such the action of the respondent management is null, void and inoperative for all purposes. He also argued that the demands raised before the Labour Officer, Solan were with regard to the increase in wages, bonus and allowances etc. Ld. Counsel for the respondents submitted that it is the case of the complainant himself that the complainant/worker was removed/retrenched by the respondents as such the provisions of Section 33 are not attracted. He further submitted that the provisions of Section 33 are only applicable where the workman was discharged or dismissed whereas in the present case the complainant was retrenched in terms of Section 25-FFA of the Act. He argued with force that since there is no discharge or dismissal of the complainant and the case of the complainant is that he was wrongly and illegally removed from service as such neither the provisions of Section 33 nor the provisions of Section 33-A are applicable in the present case.

18. On the other hand, Authorized Representative for the complainant has argued that the services of the complainant were removed during the pendency of Reference case No. 7 of 2024 in violation of Section 33-A of the Act. Since the respondents have changed the service conditions of the complainant during the pendency of reference as such the complainant is maintainable.

19. So far as the provisions of Section 33 are concerned, the same reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

20. It is admitted fact that the reference no. 7 of 2024 was pending qua the demands raised by the workers which mainly were connected with their salary, implementation as per recommendations of 7th Pay Commission, enhancement of annual income, revised pay scales to the

workers, allowing grades to the workers who have been regularized and the workers who have completed 5 years of service be declared as permanent employees, special allowances for drivers, residential accommodations for Chowkidars, free dental treatment etc. It is not disputed that the reference is still pending before this Court for adjudication. It is also an admitted fact that during the pendency of reference no. 7 of 2024, vide letter Ex. PW-1/D, the services of the complainant were terminated. It is the case of the respondents that the services of the complainant were terminated on payment of average pay for three months along-with one month's pay towards the compensation amount which comes to Rs. 2,33,936/- which amount was credited in the account of the complainant in view of the decision regarding closure of College. The respondents have claimed that they have closed the College in terms of section 2-FFA and compensation was paid in terms of Section 25-FFF of the Act.

21. The AR for the complainant has argued that the closure under Section 25-FF is mere a sham devised to camouflage the illegal retrenchment of the petitioner and the respondents have not even complied with the provisions of Section 25-FFF of the Act. It was further argued that the management has failed to even comply with the provisions of Section 25-F of the Act. It was also argued by the Authorized Representative for the complainant that even if the work of respondents has came to an end and there was a closure of the respondents it was required for the respondents to have issue mandatory notice in terms of Section 25-FFA and it was further mandatory for the respondents to have paid compensation to the complainant in terms of Section 25-FFF of the Act before issuing removal order Ex. PW-1/D.

22. In view of the rival contentions, it would be appropriate to reproduce Section 25-FFA of the Act reads as under:

"**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to(a) an undertaking in which—

(i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project."

Whereas Section 25-FFF of the Act reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

23. As per Section 25-FFF, the petitioner is entitled to notice and compensation in accordance with the provisions of Section 25-F, which reads as under:

"25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

24. Retrenchment has been defined under Section 2(oo) of the Act, which reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

From the reading of the aforesaid provisions of law, it is clear that the notice of removal Ex. PW-1/D was issued in terms of Sections Section 25-FFF of the Act and compensation is alleged to be paid in terms of Section 25-FFF of the Act. If the language of Ex. PW-1/D is taken into consideration as a whole, the removal of complainant definitely fall within the meaning of retrenchment and the same cannot be considered as dismissal or discharge. Even, during cross-examination, of the respondents witness(s), suggestions have been put to RW-1 that the respondents have violated the provisions of Section 25-F while passing the removal order Ex. PW-1/D. A suggestion was also put to RW-2 that after termination of services of the petitioner, the respondents wants to engage other workers. Since, the complainant himself has alleged violation of Sections 25-FFF and 25-F of the Act while passing of removal order Ex. PW-1/D, the case of the complainant definitely falls in the

category of retrenchment and not in the category of dismissal or discharge. Now, the next question which comes up for consideration is whether the protection of Section 33 is available to the complainant when his services have been retrenched? The Hon'ble High Court of Himachal Pradesh in case titled as **M/s Zen Technologies Ltd., Vs. State of HP and Others CWP No. 3633 of 2022 along-with CWP No. 3157 of 2022 titled as Arun Thakur & Ors Vs. M/s Zen Technology decided on 30.05.2025**, has discussed this aspect as emerges in this case. The Hon'ble High Court has held as under:

"6. In terms of Sub-section(1) of Section 33 of the Act, during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court etc., in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-section (2) of Section 33 of the Act further provides that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman, provided that no such workman shall be "discharged or dismissed," unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. According to the learned counsel for the workmen, Subsection(2) of Section 33 of the Act was violated by the Company while retrenching the workmen.

8. Having carefully perused the statutory provisions of Sub-section(2) of Section 33 of the Act, this Court is of the considered view that this Subsection is only attracted when the services of a workmen is either discharged or the workmen is dismissed by the employer. In this case, the workmen were retrenched. They were neither discharged nor were they dismissed.

9. A perusal of the complaint filed under Section 33A of the 1947 Act demonstrates that it was averred in the same that a perusal of retrenchment notice would show that the same was not retrenchment but removal of the services of the complainants for not joining the transferred station at Hyderabad. It was also averred in the complaint that as the removal of the complainants was during the pendency of the proceedings before the Labour Inspector, therefore, the said removal was against the provisions of Section 33 of the 1947 Act, more so, when the removal was without holding any inquiry and without issuance of any show cause to the workmen. It was also averred therein that the complainants were forced to encash the cheques which were handed over to them alongwith the retrenchment notice. Reply to the said compliant demonstrates that it was specifically mentioned therein by the employer Company that the provisions of

Section 33A of the 1947 Act were not attracted in the facts of the case and that the retrenchment was by following the provisions relating to retrenchment provided in the 1947 Act.

10. Section 2(oo) of the 1947 Act incidentally defines "retrenchment" and Section 2(oo) of the same defines retrenchment as under:-

Section 2(oo)

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or 50[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health."

11. Coming to the facts of the present case, in terms of the order dated 29.08.2017 which was assailed by the workmen before the learned Labour Court under Section 33A of the 1947 Act, copy whereof is appended as Annexure P-9, the services of the workmen were retrenched w.e.f. 29.08.2017 by mentioning in the retrenchment notice that the provisions of Section 25F of the Industrial Disputes Act were being complied with.

12. In this backdrop, when, in terms of the notice of retrenchment, the services of the workmen were retrenched and they were neither discharged nor dismissed, application under Section 33A of the 1947 Act against the notice of retrenchment was not maintainable. In terms of Sub-section(2) of Section 33 of the Act, the procedure prescribed in the proviso thereof has to be followed only when the workman is either being discharged or dismissed. There is no mention therein that said procedure also has to be followed when the workman is being retrenched. Section 2(A) of the 1947 Act deals with dismissal etc. of an individual workman and it provides that the dismissal etc. of an individual workman to be deemed to be an industrial dispute. Sub-section (1) thereof demonstrates that the words 'discharge', 'dismissal' and 'retrenchment' have been used disjunctively from each other, meaning thereby that 'discharge' and 'dismissal' cannot be construed to be synonyms of 'retrenchment'. This extremely important aspect of the matter was not appreciated by the learned Labour Court while passing the impugned order. In fact, a perusal of the impugned order demonstrates that the adjudication of the application filed under Section 33A of the Act was on the premise that the order dated 29.08.2017 was issued during the pendency of the dispute between the parties without appreciating that the services of the workmen were not dismissed or discharged but they were rather retrenched. In fact, legality of retrenchment is not being touched upon by this Court in these proceedings and all that this Court has to decide in these proceedings is whether in the facts of the present case an application under Section 33A of the Industrial Disputes Act was maintainable or not.

13. As has already been observed by this Court hereinabove, because in terms of the notice of retrenchment, neither the workmen were discharged nor they were dismissed, the order of retrenchment per se could not have been assailed under Section 33-A of the Industrial Disputes Act. If the workmen were aggrieved by the order of retrenchment, their remedy was not under Section33-A of the Industrial Disputes Act, but under other provisions thereof. Therefore, the application filed by the workmen under Section 33-A of the Act against the notice of retrenchment was bad and adjudication thereof in terms of the impugned order by learned Labour Court is also thus bad in law."

25. Since, it has been established on record that neither the complainant was discharged nor dismissed from service, in the light of the aforesaid decision of Hon'ble High Court, I am of the humble opinion that the complaint under Section 33-A whereby the termination of the complainant has been challenged during the pendency of reference no. 7 of 2024 is not maintainable.

26. Authorized Representative for the complainant has placed reliance on the judgment case titled as **Wipro Enterprises Pvt., Ltd. Vs. The Presiding Officer Industrial Tribunal-cum-Labour Court Shimla and Wipro Karamchari Sangh Barotiwala CWP No. 4970 of 2021**, I have no reason to disagree with the judgment of Hon'ble Court whereby Hon'ble Court has held that Section 33 and Section 33-A of the Act provide an instant remedy to the aggrieved workman and Court has to adjudicate upon the complaint as it was a dispute referred to or pending before it, however as has been discussed above since the workman was neither discharged nor dismissed as such the complaint is not maintainable under the provisions of Section 33-A of the Act.

27. Authorized Representative for the petitioner has also placed reliance on case titled as **United Bank of India Vs. Sidhartha Chakraborty 2007 LLR 1134-SC, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Ors., Tata Iron and Steel Company Ltd. Vs. S.N Modak, Strawboard Manufacturing Co. Vs. Gobind,** however, in all these judgments, the order of dismissal or discharge were passed and in these matters, the services of workman were not retrenched as such in view of the judgment as passed by the Hon'ble High Court of H.P., in M/s Zen Technology Ltd. (as referred to supra), these authorities are of no help to the case of the complainant. Authorized Representative for the complainant has also placed reliance on judgment in case titled as **Tatanagar Foundry Co. Ltd Vs. Their Workmen 1969 SCC (2) 713 and Mackinon Machenzie and company Ltd Vs. Mackinon Employees Union 2015 LLR 337**, but since this Court has come to the conclusion that the complaint filed by the complainant under Section 33-A is not maintainable as neither the services of the complainant were discharged nor dismissed as such the Court cannot go into the legality of order Ex. PW-1/D or to conclude whether the retrenchment of the petitioner was in violation of Section 25-FFF or Section 25-F of the Act, as such these judgments have not been discussed in detail.

28. Authorized Representative for the complainant has also placed reliance on the judgment of Hon'ble Apex Court in case titled as **Kumarhatty Co. Ltd. Vs. Ushnath Pakrashi AIR 1959 SC 1399,** however in this judgment the Hon'ble Apex Court had only dealt with the preposition that the complaint under Section 33-A of the Act is as good as a reference under Section 10 of the Act and argument of Ld. Counsel for the appellant that it was not a case of discharge or dismissal was not allowed to be raised. The Hon'ble Apex Court has held as under:

"**Learned counsel for the appellant wanted to argue that this was not a case of discharge or dismissal but of lay-off. We did not permit him to raise this argument because the special leave was limited only to the question set out above. The answer to that question has already been indicated above and on that answer the appeal must**

fail. We therefore dismiss the appeal, but in the circumstances we make no order as to costs -of this Court".

29. Ld. Counsel for the respondent has also placed reliance on the judgment in case titled as **Bhavnagar Municipality Vs. Alibhai Karimbhai and Ors. (1977) 2SCC 350, AIR India Corporation, Bombay Vs. V.A Rebellow and Another (1972) 1 SCC 814, Pipraich Sugar Mills Ltd., Vs. Pipraich Sugar Mills Mazdoor Union 1957 AIR SC 95** , however, since this Court has come to the conclusion that the complaint is not maintainable as such these judgments have not been discussed in detail. Once the Court has come to the conclusion that the complaint under Section 33-A is not maintainable, the Court cannot decide the legality of order Ex. PW-1/D.

30. In view of my foregoing discussion, the complaint filed by the complainant under Section 33-A of the Act deserves dismissal and the same is hereby dismissed being not maintainable. Accordingly, issue no.4 is decided against the complainant.

Issues No.1 to 3

31. In view of my detailed findings under issue no. 4, all these issues become redundant.

Relief

32. As a sequel to my findings on issue no.1 above, the complaint filed by the complainant under Section 33-A of the Act, deserves dismissal and accordingly the same is hereby dismissed being not maintainable. The complainant is not entitled to any relief under this complaint, however, it is made clear that the observations as made in this order would not debar the complainant to avail any other remedy if available to the complainant under law.

33. Let a copy of this complaint be sent to the Appropriate Government for publication in the official gazette. File, after due completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2025.

Sd/-
(ANUJA SOOD),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

CHANGE OF NAME

I, Mukesh Dogra s/o Sh. Jhankar Singh, r/o Village & P.O. Banikhet, Tehsil Dalhousie, Distt. Chamba (H.P.) declare that I have changed my minor daughter's name from Rishi Dogra to Rishika Dogra for all purposes in future. Please note.

MUKESH DOGRA
s/o Sh. Jhankar Singh,
r/o Village & P.O. Banikhet,
Tehsil Dalhousie, Distt. Chamba (H.P.).

CORRECTION OF NAME

I, Anup Chand s/o Kathu Ram, Tehsil Thunag Sharachi (532), Distt. Mandi (H.P.) in my Aadhar No. 3798 0275 2561 my name is entered as Noop Chand, which is wrong, correct name is Anup Chand.

ANUP CHAND
s/o Kathu Ram,
Tehsil Thunag Sharachi (532),
Distt. Mandi (H.P.).

CHANGE OF NAME

I, Sulochana Sharma w/o Late Sh. Bikram Ajit Sharma, r/o Village Bhuvitar, P.O. Kohala, Tehsil Jawalamukhi, Distt. Kangra (H.P.) declare that I have changed my name from Sulochna Sharma to Sulochana Sharma for all purposes in future. Please note.

SULOCHANA SHARMA
w/o Late Sh. Bikram Ajit Sharma,
r/o Village Bhuvitar, P.O. Kohala,
Tehsil Jawalamukhi, Distt. Kangra (H.P.).

CORRECTION OF NAME

I, Nisha Bisht d/o Bhumi Ram, Village Thanthal, P.O. Urtu, Tehsil Nirmand, District Kullu (H.P.) declare that my name is Manisha in my Aadhar Card, but Nisha Bisht is listed in the Panchayat records. Please correct my name to Nisha Bisht.

NISHA BISHT
d/o Bhumi Ram,
Village Thanthal, P.O. Urtu,
Tehsil Nirmand, District Kullu (H.P.).

CORRECTION OF NAME

I, Vijay Laxmi Jamwal aged 45 years w/o Sh. Bhaswar Singh, Village Manyana, P.O. Tilli, Tehsil Sadar, Distt. Mandi (H.P.) declare that my actual & correct name is Vijay Laxmi Jamwal but wrongly recorded as Vijay Laxmi in my daughter Lohita Singh's matriculation certificate, marklist etc. Please correct it.

VIJAY LAXMI JAMWAL
w/o Sh. Bhaswar Singh,
Village Manyana, P.O. Tilli,
Tehsil Sadar, Distt. Mandi (H.P.).

CHANGE OF NAME

I, Maya w/o Late Sh. Rajesh, r/o Village & P.O. Kathasu, Tehsil Jubbal, Distt. Shimla (H.P.) declare that I have changed my minor son's name from Reehan to Ryan Chauhan. All concerned please note.

MAYA
w/o Late Sh. Rajesh,
r/o Village & P.O. Kathasu,
Tehsil Jubbal, Distt. Shimla (H.P.).

CORRECTION OF NAME

I, Budhi Singh s/o Sudh Ram, r/o VPO Kararsu, Tehsil & Distt. Kullu (H.P.) declare that my son's name is wrongly entered as Yash in his Aadhar Card. Now I intend to correct my son's name as Yashmit Singh in Aadhar Card. Concerned note it.

BUDHI SINGH
s/o Sudh Ram,
r/o VPO Kararsu,
Tehsil & Distt. Kullu (H.P.).

CHANGE OF NAME

I, Pushap Raj s/o Puran Chand, r/o V.P.O. Shiwa Badar, Tehsil Sadar, Distt. Mandi (H.P.)-175124 declare that I want to change my minor son's name from Piyush to Piyush Thakur & Address Village Jawali, P.O. Tarnoh, Tehsil Kotli, Distt. Mandi (H.P.)-175001 in Aadhar No. 2827 5252 6570 & other records. All concerned note.

PUSHAP RAJ
s/o Puran Chand,
r/o V.P.O. Shiwa Badar,
Tehsil Sadar, Distt. Mandi (H.P.)-175124.

CORRECTION OF NAME

I, Sita Ram s/o Basti Ram, r/o Village Jablog, P.O. Sainj, Tehsil Renukaji, Distt. Sirmaur (H.P.)-173023 declare that in my daughter's Aadhar Card her name is wrongly entered as Surasati Devi which should be corrected as Saraswati. Please correct this.

SITA RAM
s/o Basti Ram,
r/o Village Jablog, P.O. Sainj,
Tehsil Renukaji, Distt. Sirmaur (H.P.)-173023.

मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।